152 US 250

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RECORD, CASE No. 14,235.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 229.

JOHN CARNE, JR., ISAAC C. OGDEN, HIRAM COOMBS, EDWIN DRURY, AND HENRY WULFF, COUNTY CLERK, APPELLANTS,

vs.

AUGUSTUS RUSS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 10, 1890.

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1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Walter Q. Gresham, judge of the circuit court of the United States for the seventh judicial circuit, on Tuesday, the twentieth day of May, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and ninety, and of our Independence the one hundred and fourteenth year.

WM. H. BRADLEY, *Clerk.*

AUGUSTUS RUSS *vs.* JOHN CARNE, JR., EDWIN DRURY, HIRAM COOMBS, ISAAC C. OGDEN, and E. F. C. KLOKKE.	In Chancery

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the first day of March, 1886, came the defendants, by their solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, their bond for costs, and also at the same time filed a transcript of record from the circuit court of Cook county, Illinois, in said entitled cause; which said bond
2 and transcript of record are respectively in the words and figures following, to wit:

Bond for Costs.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court, March Term, A. D. 1886.

AUGUSTUS RUSS *vs.* JOHN CARNE, JR., *et al.*	In Ch'c'y. By Removal from Circuit Court, Cook Co.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the def'ts of any costs ordered or adjudged to be paid by them I hereby agree and stipulate that execution may issue against my property for any costs taxed against said defendants.

Dated this first day of March, A. D. 1886.

GEO. W. SMITH.

(Endorsed:) Filed M'ch 1, A. D. 1886. Wm. H. Bradley, clerk.

3 *Transcript of Proceedings.*

UNITED STATES OF AMERICA, *State of Illinois, Cook County,* } *ss:*

Pleas before the Honorable Murray F. Tuley, one of the judges of the circuit court of Cook county, at a term thereof begun and held

at Chicago, in said county and State, on the third Monday (being the 17th day) of Feb-uary, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth.

Present: Honorable Murray F. Tuley, one of the judges of the circuit court of Cook county, State of Illinois; Julius S. Grinnell, State's attorney; Seth F. Hanchett, sheriff.

Attest: HENRY BEST, *Clerk.*

Be it remembered that heretofore, to wit, on the 7th day of August, A. D. 1882, Augustus Russ, Esq., by Allan C. Story, his solicitor, filed in said court his certain bill of complaint and caused to be issued out of said court and under the seal thereof the people's writ of summons, directed to the sheriff of Cook county to execute; which said bill and writ, with the sheriff's return thereon endorsed, are in the words and figures following, to wit:

4 *Bill of Complaint.*

To the honorable the judges of the circuit court of Cook county, State of Illinois, sitting in chancery:

Humbly complaining, your orator, Augustus Russ, alleges and shows as follows:

That he is the owner and in possession of that tract or parcel of land situated in the city of Chicago, county of Cook, and State of Illinois, known, designated, and described as follows, to wit: Lots thirteen (13) and fourteen (14), in block five (5), in the assessors' division of the northwest fractional quarter of section twenty-two (22), town. thirty-nine (39) north, of range fourteen (14) east, of the third principal meridian, and that he has so owned or possessed the same from before and since the year 1871, and that none of the defendants hereinafter named have ever owned or possessed either of said lots or any part thereof.

And your orator further shows that on or about the — day of ——, A. D. 18—, John Carne, Jr., Drury H. Coombs, and Isaac C. Ogden caused to be spread upon the records of Cook county aforesaid, in Book — of Deeds, at page —, a certain tax deed, dated March 16th, 1880, and numbered number "K, 1080," purporting to be signed, sealed, delivered, and acknowledged by E. F. C. Klokke, as county clerk of said Cook county, which said tax deed contained the name of the said Isaac C. Ogden as grantee, and purported to convey to him the said above-described lots.

That the said Isaac C. Ogden afterwards conveyed the said property, so that the claim which was set up by said tax deed above mentioned has been conveyed to the said Carne or the said Drury or some one of them by virtue of certain deeds predicated
5 upon said deed first above mentioned.

And your orator further shows that the taxes upon which the said tax deed was issued were both illegally levied and apportioned, illegally reported as delinquent, and that no judgment for

the same has ever been rendered, no legal precept issued, and no legal sale been made.

And your orator further shows that prior to the issuance of the said tax deed by the said Klokke, as aforesaid, the said Coombs, Ogden, Carne, or Drury did not cause diligent inquiry to be made to ascertain if the person in whose name the lots of your orator aforesaid was taxed might be found in said Cook county, nor serve such person, nor any of the occupants of the said lots, or make any due publication or give any reasonable notice to the owners or parties interested, nor did he by affidavits of facts stated particularly show that they had so done or that they had done those things which in case of valid proceedings would have entitled them to a deed.

And your orator further shows that on or about the 11th day of October, A. D. 1880, the said Carne and the said Drury caused and procured the said Klokke to issue a certain so-called certificate of tax sale, which said certificate of tax sale purports to be issued upon a certain pretended sale of the above-mentioned lots to the said Carne on that date.

But your orator shows that the taxes upon which the said tax certificate is predicated were both illegally levied and apportioned, and that the same were illegally returned as delinquent.

That no judgment for the same has ever been rendered; that no legal precept has ever been issued, and that no legal sale has ever taken place.

6 And your orator further shows that the said lots and lands above mentioned have always been taxed in the name of J. K. Pollard, who, before the purchase by your orator from him, for many years had occupied the same as his home; that since the purchase by your orator as aforesaid the said J. K. Pollard has continuously resided in the said city of Chicago, in the neighborhood of the said lots, and that he, the said J. K. Pollard, is an old citizen and a well-known personage in the neighborhood, and that at all times during the pretended levy of the said taxes and of the subsequent proceedings the slightest diligence or inquiry on the part of parties defendant could not have failed to have discovered the said J. K. Pollard.

But your orator shows that, notwithstanding such is the fact, no notice, as required by law, has ever been served upon the said J. K. Pollard or upon any of the persons who occupied the premises aforesaid, but that the parties concerned in taking out said tax deed and in causing the said certificate to be issued have sedulously concealed from the owners and parties interested all their doings in the premises.

And your orator further shows that the said Carne and Drury and other defendants are making preparations and are expecting and intending within a very short time to obtain from the said Klokke another tax deed upon the certificate above mentioned, and your orator fears and has good reason to believe that the said Klokke will issue to them the said tax deed unless restrained by the injunction of this court.

And your orator further shows that the said tax deed and the

said certificate *from* clouds upon the title of your orator and ought to be removed, and said certificate and all proceedings thereunder enjoined; and your orator further shows that he has tendered to the said Carne and Drury the full amount of any taxes upon the said lots which they or either of them have paid or any of the defendants have paid or the said Coombs or the said Ogden have paid, and also the full amount for which the said lots were pretendedly sold by proceedings which eventuated in the said tax deed, and also the full amount of said pretended sale on October 11th, 1880, together with all taxes paid by the defendants or either of them, with interest, and have done everything which in right and equity your orator ought to do in the premises, and that he is ready and willing and hereby offers to tender and pay all the said taxes, sales, and to do everything which of right and equity he ought to do in the premises.

7

Wherefore your orator prays, right and justice, that summons may issue according to law against the said John Carne, Jr., Edwin Drury, Isaac C. Ogden, E. F. C. Klokke, and H. Coombs; that an injunction may issue out from this court against the defendants, commanding and enjoining them or causing to be issued any tax deed upon the certificate of the tax sale made October 11th, 1880, and from assigning, transferring, or disposing of said tax certificate; that they may answer this bill fully and particularly, but not under oath, their answer under oath being waived, and that on a final hearing hereof the said tax deed above mentioned may be set aside as a cloud upon the title of your orator, and that said injunction may be made perpetual; and your orator will ever pray.

AUGUSTUS RUSS,
By ALLAN C. STORY, *His Sol'r.*

ALLAN C. STORY,
Sol'r for Compl't.

8 *Summons.*

STATE OF ILLINOIS, }
County of Cook, } *ss:*

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon John Carne, Jr., Edwin Drury, Isaac C. Ogden, E. F. C. Klokke, if they shall be found in your county, personally to be and appear before the circuit court of Cook county, on the first day of the term thereof, to be holden at the court-house, in Chicago, in said Cook county, on the third Monday of August, A. D. 1882, to answer unto Augustus Russ in his certain bill of complaint filed in said court on the chancery side thereof.

And have you then and —— this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Jacob Gross, clerk of said court, and the seal thereof, at Chicago, in said county, this 7th day of August, A. D. 1882.

[SEAL.] JACOB GROSS, *Clerk.*

(Endorsed:) P'd 3.00. Served this writ on the within-named defendants, John Carne, Jr., Edwin Drury, and Ernst Frederick Christian Klokke, by delivering to and leaving a copy of this writ with each of them this 11th day of August, 1882; the other defendants not ordered served, and no fees paid for further service. O. L. Mann, sheriff, by Elias Shipman, deputy.

9 And thereupon, on the 11th day of August, A. D. 1882, there was filed in said cause a certain demurrer, which is in the words and figures following, to wit:

Demurrer.

In the Circuit Court of Cook County, of the August Term, A. D. 1882.

AUGUSTUS RUSS
vs.
JOHN CRANE, EDWIN DRURY, ISAAC C. OGDEN, H. COOMBS, and E. F. C. KLOKKE. } In Chancery.

The demurrer of E. F. C. Klokke, defendant, to the bill of complaint of Augustus Russ, the above-named plaintiff.

STATE OF ILLINOIS, }
Cook County, } *ss:*

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said plaintiff's bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said bill, and for cause of demurrer showeth that the said complainant hath not in and by his said bill made or stated such a case as doth or ought to entitle him to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demand the judgment of this honorable court whether he shall be compelled to make any further or other answer *answer* to the said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

10 CONSIDER H. WILLETT,
Solicitor for Defendant.

And thereupon, on the 21st day of August, A. D. 1882, there was filed in said cause a certain appearance, which is in the words and figures following, to wit:

Appearance.

STATE OF ILLINOIS, } ss.
Cook County, }

In the Circuit Court of Cook County, of the August Term, A. D. 1882.

AUGUSTUS RUSS }
vs. } Bill.
JOHN CARNE, JR., *et al.* }

We hereby enter our appearance as solicitor in the above-entitled cause for John Carne, Jr., Edwin Drury, and Hiram Coombs, three of the defendants in the above-entitled bill of complaint.

J. P. AND P. R. WILSON,
Solicitors for Defendants.

And thereupon, afterwards, to wit, on the 9th day of September, A. D. 1882, there was filed in said cause a certain answer, which is in the words and figures following, to wit:

Answer.

STATE OF ILLINOIS, } ss.
Cook County, }

In the Circuit Court of Cook County, of the August Term, A. D. 1882.

11 AUGUSTUS RUSS }
vs. } Bill.
JOHN CARNE, JR., *et al.* }

The joint answer of John Carne, Jr., Edwin Drury, and H. Coombs, defendants, to the bill of complaint of Augustus Russ, complainant.

These defendants, saving and reserving to themselves all benefit of exception to the said bill of complaint, for answer to so much thereof as they are advised it is material or necessary for them to make answer unto, say that they deny that said complainant is the owner or in possession of the parcel of land in said bill described, situated in the city of Chicago, county of Cook and State of Illinois, and known as lots thirteen and fourteen, in block five, in the assessors' division of the northwest fractional quarter of section twenty-two, township thirty-nine north, range fourteen east, of the third principal meridian, or that he has ever owned said premises or any part thereof. These defendants admit that a tax deed was recorded in said Cook county on March sixteenth, 1880, signed, sealed, delivered, and acknowledged by the county clerk of said Cook county, which said tax deed purports to convey the premises above described to said defendant, Isaac C. Ogden.

These defendants, further answering, deny that said Isaac C. Ogden afterwards conveyed said property or any interest therein to either defendants.

These defendants, further answering, deny that the taxes upon which said tax deed was issued were illegally levied or apportioned or illegally reported as delinquent, and also deny that no judgment for the same was entered, or that no legal precept issued, or that no legal sale has been made; but, on the contrary, that said tax deed is based upon a legal sale by virtue of a legal precept issued upon a legal judgment for taxes legally levied and assessed upon said lots.

12 These defendants, further answering, deny that prior to the issuance of said tax deed by the said Klokke these defendants or the said Isaac C. Ogden did not cause diligent inquiry to be made to ascertain of the person in whose name the lots aforesaid were taxed could be found in the county of Cook; but, on the contrary, aver that they did cause diligent inquiry to be made in Cook county for J. K. Pollard, the person in whose name said lots were taxed, and that upon such diligent inquiry they were unable to find said Pollard in the said Cook county.

These defendants, further answering, admit that on or about October seventh, 1880, the said Klokke issued a certain certificate of tax sale purporting to be issued at a sale of *of* said lots to the said Carne on that date; but these defendants deny that the taxes upon which said certificate is predicated were illegally levied or apportioned, or that the lots were illegally returned as delinquent, or that no judgment for the sale has been rendered, or that no legal precept has been issued, or that no legal sale has ever taken place; but, on the contrary, these defendants aver that said certificate was issued and a legal sale had under and by virtue of a legal precept issued upon a legal judgment of the county court of said Cook county for the taxes legally levied and assessed and returned as delinquent, and that said judgment so rendered is and was an adjudication as to the validity of the taxes therein included and of the regularity of the proceedings and entry of said judgment, and said judgment is set up and relied upon as a bar and defence to all defects in the proceedings by which the taxes included in said judgment were levied and returned as delinquent.

These defendants, further answering, admit that the said lots and lands have been taxed in the name of J. K. Pollard.

13 These defendants deny that he has at all times since the said tax sale been in the city of Chicago or county of Cook, so as to be found upon inquiry, so that notice could be served upon him.

These defendants, further answering, *and* that said Klokke will issue a tax deed upon the said certificate issued in 1880 unless restrained by an order of this court.

These defendants, further answering, deny that said complainant has tendered to them or either of them the amount which has been paid for taxes upon said lots by the defendants to said bill.

And these defendants deny that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto and

not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOHN CARNE, JR.,
EDWIN DRURY &
H. COOMBS.
By J. P. WILSON, *Their Sol'r.*

J. P. & T. R. WILSON,
Sol'rs & of Counsel for Def'ts.

And thereupon, on the 9th and 10th days of October, A. D. 1882, the following, among other, proceedings were had and entered of record in said court, to wit:

14 *Order Oct. 9, 1882.*

AUGUSTUS RUSS
vs.
JOHN CARNE, JR., *et al.* } Bill. 1205. 1120.

It is ordered that complainant have leave to give notice to the defendants herein of a motion for an injunction for to-morrow morning at ten o'clock.

Order Oct. 10, 1882.

AUGUSTUS RUSS
vs.
JOHN CARNE, JR., EDWIN DRURY, H. COOMBS, ISAAC C. OGDEN, and E. F. C. KLOKKE. } Bill. 1205. 1120.

On this day came the complainant, by his solicitor, and moves the court that an injunction issue against the defendants enjoining them from issuing or causing to be issued any tax deed upon the certificate of tax sale made on or about October the eleventh, A. D. 1880, certifying to the sale of lots thirteen (13) and fourteen (14), in block five, in the assessors' division of the northwest fractional quarter of section twenty-two (22), town. thirty-nine (39) north, of range fourteen (14) east, of the 3rd principal meridian, and from assigning, transferring, or disposing of their said tax certificate until the further order of the court, and it appearing to the court that the defendants have been notified of said motion, and that the said motion ought to be granted, the court does hereby order that an injunction issue accordingly upon said defendant giving
15 bond, with Wm. G. Wetherell as surety, in the penal sum of two hundred dollars, conditioned as provided by law.

And thereupon, afterwards, to wit, on the same day, to wit, on the 10th day of October, A. D. 1882, certain affidavits were filed in said cause in the words and figures following, to wit:

Affidavit of J. K. Pollard.

STATE OF ILLINOIS, }
Cook County, } ss:

In the Circuit Court of Cook County.

AUGUSTUS RUSS
vs.
JOHN CARNE, JR., EDWIN DRURY, H. COOMBS, ISAAC C. OGDEN, and E. F. C. KLOKKE, County Clerk of Cook County, in the State of Illinois. } In Chancery.

John K. Pollard, of Chicago, in said county, personally comes, makes oath, and thereupon deposes and says that he has resided continually for the last thirty-eight years in the county of Cook aforesaid, and, with the exception of a short time, when he resided at Highland Park, in said county, and another short period, when he resided at Winnetka, has lived in said city of Chicago.

That for several years last past he has resided at number 2722 Calumet avenue, in said city of Chicago; that during the two months and more preceding the 11th day of July, A. D. 1882, he resided at the place last mentioned constantly, and was not out of said city or county during any part of said two months, with the exception of the 4th, 5th, and 6th days of July, 1882; that affiant also occupied the office No. 188 Dearborn street, in said city, during the whole of the said two months, as he has done constantly for about eighteen months last past, and that he was at said office, after the manner of business men, during the usual business hours, during every day of said period, with perhaps the exception of half a dozen days during that time.

16

And affiant further says that he formerly was the owner of lots thirteen (13) and fourteen (14), in block five (5), in the Assessors' division of the northwest fractional quarter of section twenty-two (22), township thirty-nine (39) north, of range fourteen (14) east, of the third principal meridian.

That the same was taxed in the name of affiant while he so owned the same, and that, as he is informed and believes, said land has been taxed in the name of affiant ever since.

And affiant further says that no notice has ever been served upon him of any kind concerning a sale of the said lots or any part thereof for taxes since the year 1878 to affiant's certain recollection, and that it is a matter of entire certainty that during the two months preceding the 11th day of July, A. D. 1882, no such notice of tax sale was either served upon affiant in person or at his residence aforesaid.

And affiant further says that any real effort to have found out the whereabouts of affiant at any time during said two months preceding July 11th, A. D. 1882, could not have failed of discovering affiant, for the reason that the long residence of affiant in said city has made him known either in person or in a business way to

a majority of the older residents in said city; and further affiant says not.

J. K. POLLARD.

Subscribed and sworn to before me this 9th day of October, A. D. 1882.

WILLIAM G. WETHERELL. [SEAL.]
Notary Public.

17 *Aff't of F. C. Russell.*

In the Circuit Court of Cook County.

AUGUSTUS RUSS
vs. } In Chancery.
JOHN CARNE, JR., *et al.*

STATE OF ILLINOIS, }
County of Cook, } ss.

F. C. Russell —, under oath, and says that on the 9th day of October, A. D. 1882, before the hour of 5 p. m., he served notice on J. P. & T. R. Wilson and C. H. Willett, the solicitors for the defendants herein, that he would, on the 10th of said Oct., at 10 a. m., before Judge Tuley, apply for an injunction herein, and also served upon each of them a copy of the affidavit of J. K. Pollard, now on file herein on this date.

F. C. RUSSELL.

Sworn to and subscribed this 10th day of October, A. D. 1882.
JACOB GROSS, *Clerk.*

And thereupon, on the same day, to wit, on the 10th day of October, A. D. 1882, a certain injunction bond was filed in said cause, to wit:

Injunction Bond.

Know all men by these presents that we, Augustus Russ and William G. Wetherell, of the county of Cook and State of Illinois, are held and firmly bound unto John Carne, Jr., Edwin Drury, H. Coombs, Isaac C. Ogden, and E. F. C. Klokke, defendants, of Chicago, county and State aforesaid, in the sum of two hundred dollars, to be paid to the said defendants, executors, administrators, or assigns; for which payment, well and truly to be made, we
18 bind ourselves, jointly and severally, and our respective heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 10th day of October, A. D. 1882.

Whereas the above-bounden Augustus Russ has filed his bill of complaint in the circuit court of Cook county and State of Illinois against the above-named John Carne, Jr., Edwin Drury, H. Coombs, Isaac C. Ogden, and E. F. C. Klokke, praying, among other things,

for an injunction to restrain them from issuing or causing to be issued any tax deed upon the certificate of tax sale made on or about October the eleventh (11th), A. D. 1880, certifying to the sale of lots 13 and 14, in block 5, in the Assessors' division of the northwest fractional quarter of section 22, town. 39 north, of range 14 east, of the 3rd principal meridian, and from assigning, transferring, or disposing of the said tax certificate;

And whereas said court has allowed an injunction for that purpose according to the prayer of said bill upon the said Augustus Russ giving bond and security as provided by law;

Now, therefore, the condition of the above obligation is such that if the bounden Augustus Russ, *their* executors or administrators, or any of them, shall and do well and truly pay or cause to be paid to the said John Carne, Jr., Edwin Drury, H. Coombs, Isaac C. Ogden, and E. F. C. Klokke, *his* executors, administrators, or assigns, all damages which may be sustained by the said defendant- by reason of the wrongful issuing of such injunction, and also all such costs and damages as shall be awarded against the said complainant in case the said injunction shall be dissolved, then the above obligation to be void; otherwise to be and remain in full force and virtue.

AUGUSTUS RUSS, [SEAL.]
By W. H. EMAN, *His Att'y-in-fact.*
WILLIAM G. WETHERELL. [SEAL.]

19 (Endorsed:) Filed in the circuit court and approved this 10th day of Oct., A. D. 1882. Jacob Gross, clerk.

And thereupon, afterwards, to wit, on the 26th day of February, A. D. 1886, a certain notice, appearance, peti-on, and bond for removal of said cause into the United States circuit court for the northern district of Illinois —; all of which said papers are in the words and figure's following, to wit:

Appearance of Ogden.

In the Circuit Court of Cook County.

AUGUSTUS RUSS
vs. } In Chancery.
JOHN CARNE, JR., *et al.*

The appearance of defendant Isaac C. Ogden is hereby entered in the above-entitled cause.

GEORGE W. SMITH,
Sol'r for said Def't.

Feb-nary 23, 1886.

Notice.

In the Circuit Court of Cook County. In Chancery.

AUGUSTUS RUSS
vs.
JOHN CARNE, JR., *et al.*

To Allan C. Story, Esq., complainant's solicitor:

20 Please take notice that on Friday, Feb. 26, 1886, at ten o'clock a. m., or as soon thereafter as the matter can be heard, before Judge Moran, I shall present the petition of defendant Isaac C. Ogden for the removal of the above-entitled cause to the circuit court of the United States for the northern district of Illinois.

GEORGE W. SMITH;
Sol'or for Def'ts.

CHICAGO, *February* 24, 1886.

Received a copy of the above notice this — day of February, 1886.

———,
Complainant's Solicitor.

Petition for Removal.

In the Circuit Court of Cook County.

AUGUSTUS RUSS, Complainant,
vs.
JOHN CARNE, JR., EDWIN DRURY, ISAAC C. OGDEN, E. F. C. KLOKKE, and H. COOMBS, Defendants. } In Chancery.

To the judges of said court:

Your petitioner, Isaac C. Ogden, respectfully shows that he is one of the defendants in the above-entitled cause, and that the matter and amount in dispute therein, exclusive of costs, exceeds the sum or value of five hundred dollars.

That the controversy in said suit is between citizens of different States; that your petitioner was at the time of the commencement of this suit and still is a citizen of the State of New York; that said complainant, Russ, was then and still is a citizen of the State of Massachusetts, and that said other defendants then and still are citizens of the State of Illinois.

21 Petitioner further states that in said suit there is a controversy which is wholly between citizens of different States and which can be wholly determined as between them, to wit, a controversy between your petitioner and said complainant, Russ.

Your petitioner offers herewith a bond, with good and sufficient surety, for his entering in the circuit court of the United States for the northern district of Illinois on the first day of its next session a copy of the record in this suit and for paying all costs that may be awarded by said circuit court if said court shall hold that

this suit was wrongfully or improperly removed thereto, and he prays this honorable court to proceed no further herein as to him, except to make the order of removal required by law, and accept said surety and bond and to cause the record herein to be removed into said circuit court of the United States.

ISAAC OGDEN,
By GEO. W. SMITH,
His Sol'r.

Bond for Removal.

Know all men by these presents that we, Isaac C. Ogden, as principal, and John Carnes, Jr., as surety, are held and firmly bound unto Augustus Russ in the penal sum of five hundred dollars; for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally, firmly by these presents.

Witness our hands and seals this 24th day of February, 1886.

The condition of the foregoing obligation is such that whereas the said Isaac C. Ogden having petitioned the circuit court of Cook county, in the State of Illinois, for the removal of a certain cause therein pending, on the chancery side thereof, wherein said Augustus Russ is complainant and said Ogden together with John
22 Carne, Jr., and others are defendants, to the circuit court of the United States for the northern district of Illinois, now, if said Isaac C. Ogden shall enter in the said circuit court of the United States on the first day of its next session a copy of the record in said cause and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise to remain in full force and virtue.

ISAAC C. OGDEN. [SEAL.]
JOHN CARNE, JR. [SEAL.]

Approved.
T. A. MORAN, *Judge.* [SEAL.]

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss.:
Cook County, }

I, Henry Best, clerk of the circuit court of Cook county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of all papers filed and all proceedings had and entered of record in a certain cause pending in said court, on the chancery side thereof, between Augustus Russ, complainant, and John Carne *et al.*, defendants.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Chicago, in said county, this first day of March, A. D. 1886.

HENRY BEST, *Clerk.*

23 STATE OF ILLINOIS, } ss:
County of Cook, }

I, M. F. Tuley, chief justice of the circuit court of Cook county, in the State of Illinois, hereby certify that Henry Best, who signed the above certificate, was at the time of signing the same and is now clerk of the said circuit court of Cook county, duly commissioned and qualified; that said court is a court of record, having a clerk and seal; that said attestation is in due form and by the proper officer, according to the laws of the State of Illinois, and that the above signature of said clerk is genuine.

Witness my hand and seal, at Chicago, in said county of Cook, this first day of March, A. D. 1886.

M. F. TULEY. [SEAL.]
Judge of the Circuit Court of Cook County.

(Endorsed:) Filed March 1, 1886. Wm. H. Bradley, clerk.

24 Afterward, to wit, on the eighth day of March, 1886, came Isaac C. Ogden, by his solicitor, and filed in said clerk's office his appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance.

CHICAGO, *March* 8, 1886.

U. S. Circuit Court, Nor. Dist. of Ill.

AUGUSTUS RUSS }
vs.
JOHN CARNE *et al.* }

I hereby enter the appearance of Isaac C. Ogden, one of the defendants in the above-entitled cause.

GEO. W. SMITH,
Sol'r for Ogden.

(Endorsed:) Filed M'ch 8, 1886. Wm. H. Bradley, clerk.

25 Afterward, to wit, on the twenty-sixth day of March, 1886, came Isaac C. Ogden, by his solicitor, and filed in said clerk's office his answer to the bill in said entitled cause; which said answer is in the words and figures following, to wit:

Answer.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

The separate answer of Isaac C. Ogden, one of the defendants, to the bill of complaint of Augustus Russ, complainant.

This defendant, saving all benefit of exception to said bill thereto, answering, says—

That the said complainant is a citizen and resident of the State

of Massachusetts, and that this defendant is a resident and citizen of the State of New York.

And this defendant, further answering, admits that a tax deed was recorded, as alleged in said bill, in said Cook county on March 16th, 1880, signed, sealed, and acknowledged by the county clerk of said Cook county; which said tax deed was delivered and purported to convey to this defendant the premises described in said bill, known as lots thirteen (13) and fourteen (14), in block five (5), in the Assessors' division of the northeast fractional quarter of section two, township thirty-nine north, range thirteen east, of the third principal meridian. This defendant neither admits
26 nor denies the allegation of said bill as to ownership and possession of said premises, but leaves the complainant to such proof on that behalf as he may have.

He further denies that he has conveyed said property or any interest therein to any of the other defendants herein or to any other person.

This defendant, further answering, denies that the taxes upon which said tax deed was issued were illegally levied or apportioned or illegally reported as delinquent, and also denies that no judgment for the same was entered, or that no legal precept issued, or that no legal sale was made. On the contrary, he avers that said tax deed was based upon a legal sale by virtue of a legal precept issued upon a legal judgment for taxes legally levied and assessments made upon said lots.

This defendant, further answering, denies that, prior to the issuance of said tax deed by the said Klokke, this defendant did not cause diligent inquiry to be made to ascertain if the person in whose name the lots aforesaid were taxed could be found in the county of Cook, but, on the contrary, avers that he did cause diligent inquiry to be made in Cook county for J. K. Pollard, the person in whose name said lots were taxed, and that upon such diligent inquiry he was unable to find said Pollard in said Cook county.

This defendant, further answering, admits that on or about October 11th, 1880, the said Klokke issued a certain certificate of tax
27 sale purporting to be issued at a sale of said lots to the defendant Carne on that date. This defendant denies that the taxes upon which said certificate was predicated were illegally levied or apportioned, or that the lands were illegally returned as delinquent, or that no judgment for the same had been rendered, or that no legal precept had been issued, or that no legal sale had ever taken place, but, on the contrary, this defendant avers that said certificate was issued and a legal sale had under and by virtue of a legal precept issued upon a legal judgment of the county court of said Cook county for the taxes legally levied and assessed and returned as delinquent, and the said judgment so rendered is and was an adjudication as to the validity of the taxes therein included and of the regularity of the proceedings and entry of said judgment, and said judgment is set up and relied upon as a bar and defense to any defects in the proceedings by which the taxes included in said judgment were levied and returned as delinquent.

This defendant admits that the said lots and lands had been taxed in the name of J. K. Pollard and denies that said Pollard has at all times since the said tax sale been in the city of Chicago and county of Cook, so as to be found upon inquiry, so that notice could be served upon him.

This defendant admits that said Klokke was about to issue
28 a deed upon said certificate when enjoined by an order made in this suit by the circuit court of Cook county.

This defendant, further answering, says that he is the owner of the certificate last mentioned and has been such owner since the same was issued; that since September 12th, 1877, the firm of Carne & Drury, consisting of defendants John Carne, Jr., Edwin Drury, and Horace G. Drury, and with which said defendant Coombs is connected, have been the agents, at Chicago, of this defendant for the purpose of purchasing at tax sales, paying taxes, giving notices, attending to the issue of tax deeds, and other matters growing out of the conduct and management of said business.

And this defendant denies that said complainant has ever tendered to this defendant or to the other defendants the amount which has been paid for taxes upon said lots by this defendant.

He avers that the complainant, by himself or his tenants, has been in the possession of said lots since September 12th, 1877, and has enjoyed the rents and profits thereof, amounting, as this defendant is informed and believes, for a very large portion of the time, to the sum of three thousand dollars per annum; that said premises are situated upon Wabash avenue, in the city of Chicago, and are of the value of the sum of thirty-five thousand dollars; that the said complainant has been represented in the city of Chicago by
29 one Emerson, and that since the sale of September 12th, 1877, this defendant, through said Carne & Drury or some one of the members of said firm or said Coombs, has frequently applied to said Emerson to pay to this defendant the amount required by law to redeem said premises and has offered to allow the same to be redeemed upon such terms.

And this defendant, now here, while insisting that the sales hereinabove mentioned were in all respects regular and valid, and that said tax deed operated to convey said premises to this defendant, offers to waive his claim of ownership to said premises and his claim under the certificate aforesaid and to surrender said certificate and to reconvey said premises to said complainant, if said complainant will pay to him the amounts which have been paid by this defendant on account of said premises, with the penalties which have accrued thereon and ten per cent. interest on the sums so paid from the date of payment, together with the outlays of this defendant for expenses and charges in connection with said payment and the procuring of said deed and in advertising.

And this defendant insists that, by the law of Illinois as it now is, he is entitled, even in case of an invalid sale, to be reimbursed moneys so paid, with such penalties, interest, and expenses.

30 This defendant, further answering, says that he has paid on account of taxes, assessments, and costs levied or charged

against said premises on the dates mentioned the sums following respectively—that is to say:

On September 12, 1877	$283 18
August 27, 1878	6 98
August 5, 1879	7 28
September 27, 1879	1,226 24
October 11, 1880	986 53
July 20, 1881	259 46
August 10, 1882	744 44
September 29, 1883	373 21
Making an aggregate of	$3,887 32

Exclusive of penalties, interest, advertising, clerks' and recorders' fees, serving notices, charges of counsel, and agents.

And this defendant, further answering, says that he was never served with process in this suit, and that his appearance was entered on the 25th day of February, 1886, voluntarily; that no offer has been made to this defendant to redeem said premises, except as set forth in said bill, whereby no sum is tendered nor is an offer made to pay any ascertained sum.

This defendant denies any other matter or thing in the said bill not hereby confessed, traversed, or avoided and which is material, and prays to be dismissed with costs.

ISAAC G. OGDEN,
By GEO. W. SMITH, *His Solicitor.*

GEO. W. SMITH,
Sol'r for Def't Ogden.

(Endorsed:) Filed Mch. 26, 1886. Wm. H. Bradley, clerk.

31 Afterwards, to wit, on the tenth day of May, 1886, came the complainant, by his solicitor, and filed in said clerk's office his motion to remand to the circuit court of Cook county, Illinois, in said entitled cause; which said motion is in the words and figures following, to wit:

Motion to Remand.

In the Circuit Court of the United States of America in and for the Northern District of Illinois.

AUGUSTUS RUSS)
vs.
JOHN CARNE *et al.*)

And now comes the said complainant, Augustus Russ, by Allan C. Story, his solicitor, and moves the court that said cause be remanded to the circuit court of Cook county, Illinois, for the reason that the controversy in said cause is of such a character, as between said complainant and the remainder of said defendants, that the

controversy with respect to defendant Ogden cannot be separated from the controversy with the other of said defendants.

ALLAN C. STORY,
Solicitor for Complainant.
G. W. SMITH.

(Endorsed:) Filed May 10, 1886. Wm. H. Bradley, clerk.

32 Afterwards, to wit, on the seventh day of June, in the adjourned May term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

AUGUSTUS RUSS
vs. } In Chancery.
JOHN CARNE, JR., *et al.*

Now come the parties, by their solicitors, and now comes on to be heard the motion to remand this cause, and, after hearing the arguments of counsel, the court overrules said motion and grants leave to said complainant to amend his bill within twenty days.

33 Afterwards, to wit, on the thirteenth day of July, in the July term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

AUGUSTUS RUSS
vs. } In Chancery.
JOHN CARNE, JR., *et al.*

On motion of George W. Smith, Esq., for the defendants, it is ordered that said defendants' answer to the original bill herein stand as their answer to the amended bill of said complainant.

34 Afterward, to wit, on the thirteenth day of January, 1887, came the complainant, by his solicitor, and filed in said clerk's office his replication to the answer of Charles O. Ogden in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

United States Circuit Court, Northern District of Illinois.

AUGUSTUS RUSS
vs.
CHARLES O. OGDEN *et al.* } In Chancery.

The replication of the said complainant to the answer of the said Charles C. Ogden to the amended bill of complaint of the said complainant.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove
35 as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

ALLAN C. STORY,
Solicitor for Complainant.

(Endorsed:) Filed Jan'y 13, 1887. Wm. H. Bradley, clerk.

36 Afterward, to wit, on the twenty-first day of April, 1887, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

In the Circuit Court of the United States for the Northern District of Illinois.

AUGUSTUS RUSS
vs.
JOHN CARNE, JR., *et al.* } In Chancery.

It is stipulated that the demurrer of the county clerk of Cook county shall be withdrawn; that the answer of defendants Carne, Drury, and Coombs to original bill herein shall be refiled as their answer to said bill as amended, and that said answer, as well as the answer of said Ogden, shall stand as and for the answer of said county clerk to the bill of complaint as amended; that no costs or docket fee shall be taxed against said county clerk in any event, and

that this cause may be referred at once to one of the masters of this court to take proofs, and report the same, together with his findings.

April 13, 1887.

GEO. W. SMITH,
Solicitor for Carne, Drury, Coombs, & Ogden.
ALLAN C. STORY,
Sol'r for Complainant.
E. R. BLISS,
Sol'r for County Clerk.

(Endorsed:) Filed Ap'l 21, 1887. Wm. H. Bradley, cl'k.

37 On the same day, to wit, on the twenty-first day of April, in the adjourned March term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

AUGUSTUS RUSS
vs.
JOHN CARNE, JR., *et al.* } In Chancery.

On stipulation of the solicitors for the respective parties, it is ordered that the demurrer of the county clerk of Cook county be withdrawn; that the answer of defendants Carne, Drury, and Coombs to the original bill herein shall be considered as refiled as their answer to said bill as amended, and that said answer, as well as the answer of defendant Ogden, shall stand as and for the answer of said county clerk to said bill of complaint as amended. It is further ordered that this cause be referred to John I. Bennett, master in chancery, to take proofs and report the same, together with his findings.

38 Afterward, to wit, on the first day of October, 1888, came John I. Bennett, one of the masters in chancery of said court, and filed in said clerk's office his report in said entitled cause; which said report is in the words and figures, to wit:

Master's Report of Findings.

Circuit Court of the United States, Northern District of Illinois.

AUGUSTUS RUSS
vs.
JOHN CARNE *et al.* }

To the honorable the judges of said court:

In pursuance of the order of reference made to me as master of this court on the 21st day of April, 1887, having cotemporaneously with the filing hereof also filed as a part of this report my report of the evidence taken herein in pursuance of said reference, having

considered said evidence and the arguments of counsel herein, make this my report of findings. This is a bill to set aside and cancel a tax deed issued by the clerk of the county court of Cook county, Illinois, March 16, 1880, purporting to convey the property involved in this suit to defendant Ogden as a cloud upon the title. Complainant contends that the deed is void for want of compliance with the constitution and revenue laws of the State of Illinois in respect
39 to the service of the required notices of the sale and non-redemption. In the assessment upon which the levy was made, resulting in the tax deed, J. K. Pollard was named as the owner. The evidence shows that at the time when notice should have been served W. H. Emerson, William Brown, and W. R. Wilson resided upon the premises; that Pollard, although a citizen and a resident in Cook county, was not served. This fact is not contested. Emmerson and his wife deny service on them or either of them, and thus the proof is conflicting with respect to service upon them.

Counsel for the complainant contends that the affidavits which were presented to the county clerk showing service upon Wilson, Emmerson, and Mrs. Emmerson are insufficient because they were taken before Edwin Drury, who is shown by the evidence to have been interested with Ogden in the procurement of the tax deed. I do not pass upon this question because the notice was confessedly not served upon John K. Pollard, as required by law, and because the evidence does not show that the notice was served upon William Brown, who is shown to have been in possession of a part of the premises at the time when the notices should have been served.

I find from the evidence, therefore, that the provisions of the revenue law with respect to notices of non-redemption from
40 the sale upon which the tax deed was issued was not in compliance with the requirements of the constitution and laws of the State, and that on that account the deed is void and a cloud upon the title of the complainant.

The sale of the same premises to defendant Ogden Oct. 1, 1880, upon which the certificate issued Oct. 11, 1880, while said defendant claimed ownership by the former tax deed, would, I think, make the case fall within the rule that a tax purchase by the owner of land must be considered merely as a payment of the taxes, and entitles the complainant to a cancellation of the certificate upon payment of the amount paid at the latter sale and subsequent tax payments, with equitable interest upon the several amounts so paid.

It is claimed on the part of the complainant that a tender was made by him of the amount of all tax claims on these lots August 7th, 1882, the same day on which the suit was commenced.

The evidence is conflicting upon the question of tender. Emmerson testifies that he made the tender on that day of $3,200, and exhibits the check on which the money was drawn. He is corroborated, in so far as relates to the drawing of the money, by Russell, who says that he went with him to the office of Carne and Drury when he made the tender. Emmerson swears that he made

the tender to Carne. Carne denies this and swears that no such tender was ever made.

41 The evidence shows that defendant Ogden had made the following payments on account of taxes upon these lots up to and including July 20th, 1881:

September 12, 1877, $283.18; August 27, 1878, $6.98; August 5, 1879, $7.28; September 27, 1879, $1,226.24; October 1, 1880, $986.53, and July 20th, 1881, $259.46. The evidence also shows payments made by him in 1882, without fixing the dates of the further sums of $260.13 and $484.31, respectively, and the payment of $373.21 September 29, 1883.

Although Russell says that in his investigation to ascertain how much to tender he included the amounts paid at the sales and in tax payments, he does not identify or state any of the amounts included in his estimate. It is manifest that he included no payments made after July 20th, 1881. The amount due on payments made on and prior to that date, with 6 per cent. interest thereon up to the date of tender, was $3,192.23. So that if those were all of the payments which had been made up to the date of tender, the tender was sufficient in amount.

It is contended by counsel for the complainant that the presumption should be entertained that the two payments proven to have been made by Ogden in 1882, the dates of which are not shown by the evidence, were made after the tender, and that the

42 onus rests upon the defendants to show that they were made before.

It seems to me more reasonable to require the complainant to make out his case by proving all payments made by defendant Ogden up to the date of tender, and that the full amount so paid by him had been tendered.

The date of this tender, August 7th, was subsequent to the period during which tax payments are usually made, and, in the absence of any proof upon the question, I do not think the presumption should be entertained that these two payments were made after and not before the tender.

In order to stop the running of interest at the equitable rate of six per cent. upon moneys actually paid in satisfaction of taxes properly levied against lands and not including any other charges or actual expenses incurred beyond such payments, a court of equity should require satisfactory proof of a technical compliance with the law of tender. There is no proof showing that the two payments made by Ogden in 1882 were made after August 7th, nor is the proof clear as to whether the tender was made before or after the suit was commenced. The statement of the witness is that it was after. The commencement of the suit was on the 7th, when the writ was issued, and not on the 11th, when it was served

43 on the defendant. The evidence does not show the facts occurring in *in* the office of Carne and Drury, from which the legal inference of a tender must be drawn.

So on the present state of proof I hold that the tender claimed to have been made by the complainant does not clearly appear to

have been of a sufficient amount to satisfy all of the claims of defendant Ogden due at the date of the tender.

The proof shows that after the form of making the tender had been gone through with the money was returned to the complainant, who has had the use of it ever since.

The delay in this litigation has made the item of interest on the amount tendered a considerable sum, and unless precluded by the proof equity would seem to require the return of the actual money invested, with 6 per cent. interest.

I have concluded to allow defendant Ogden the actual amounts paid by him at these tax sales and in payment of subsequent taxes upon these lots, excluding the other items of expense claimed by him, although actually incurred and paid by defendant Ogden, with 6 per cent. interest from the various dates of payments up to the date of this report.

The injunction awarded in this case was against the issuance of a tax deed upon the certificate of the sale made in 1880. The scope of it was limited to that.

44 The defendant had the right, therefore, I think, to protect his tax claims, notwithstanding the injunction against his taking out the deed upon his certificate by the payment of subsequent taxes whenever they were omitted to be paid by the complainant, and, if he had that right, interest should be allowed on these payments.

Inasmuch as there is a failure of proof as to the dates of these two payments made in 1882, and no presumption can be entertained to help out the want of proof, I have only allowed defendant Ogden interest on these payments from the last day of that year.

Various sums are proven to have been paid by defendant Ogden for various purposes other than in tax purchases and subsequent payment of taxes on these lots. I have disallowed all claims for such payments.

In pursuance of the rule above indicated, I find the following sums equitably due defendant Ogden upon the cancellation of his tax claims upon these lots, to wit:

Amount paid September 12th, 1877	$283 18
Interest on same at 6 per cent. to Oct 1, 1888	187 75
Amount paid August 27, 1878	6 98
Interest on same at 6 per cent. to Oct. 1, 1888	4 22
Amount paid Aug. 5, 1878	7 28
Interest on same at 6 per cent. to Oct. 1, 1888	4 00
Amount paid Sept. 27, 1879	1,226 24
Interest on same at 6 per cent. to Oct. 1, 1888	662 98
45 Amount paid Oct. 1, 1880	986 53
Interest on same at 6 per cent. to Oct. 1, 1888	473 53
Amount paid July 20, 1881	259 46
Interest on same at 6 per cent. to Oct. 1 1888	112 08
Amount paid Dec. 31, 1882	744 44
Interest on same at 6 per cent. to Oct. 1, 1888	256 83
Amount paid Sept. 29, 1883	373 21
Interest on same at 6 per cent. to Oct. 1, 1888	111 96
Making the sum of	$5,700 67

Upon the payment or tender of which amount to defendant Ogden or its payment into court the complainant should have a decree for the cancellation of the said deed and certificate and of all other tax claims held by defendant Ogden. If the court shall be of opinion that I am in error in holding, as I have done above, that the tender claimed to have been made by complainant is not proven to have been sufficient, and shall sustain an exception to my ruling in that regard and hold that the tender is proven to have been made, as alleged by the complainant, then the amount which the complainant is required to bring into court is the $3,200 tendered, without interest, and the three payments made subsequent to July 20, 1881, with interest thereon at 6 per cent. This amount, at the date of this report, is four thousand six hundred and eighty-six dollars and forty-four cents ($4,686.44), which amount, upon the court's so holding, shall be brought into court, instead of $5,700.67.

46 All of which is respectfully submitted.

JOHN I. BENNETT,
Master in Chancery of the United States Court for the Northern District of Illinois.

(Endorsed:) Filed the 1st day of Oct., 1888. Wm. H. Bradley, clerk.

47 Afterward, to wit, on the twenty-fourth day of October, 1888, came the complainant, by his solicitor, and filed in said clerk's office his exceptions to the report of the master in said entitled cause; which said exceptions are in the words and figures following, to wit:

Complainant's Exceptions.

UNITED STATES OF AMERICA, }
Northern District of Illinois, }

AUGUSTUS RUSS }
vs. } In Equity.
JOHN CARNE, JR., *et al.* }

Exceptions of complainant to the report of John I. Bennett, Esq., master in chancery in this court, filed herein Oct. 1, 1888.

1st exception. For that the said master has not in and by his said report found that the sum of $3,200 tendered to the said defendants August 7th, 1882, and prior to the bringing of this suit was a full, proper, and legal tender, and had the effect to stop interest upon all money at that time due to the defendants or either thereof for or on account of said premises.

2nd exception. For that the said master erroneously found upon the evidence and under the pleadings that the sums of $260.13 for State and county taxes of 1881, and the further sum of $484.31 for special assessment No. 4066, were and each thereof was in fact

paid by the said defendants prior to the date of said tender,
48 namely, August 7, 1882, the date of commencement of said suit, contrary to said evidence and pleadings, and therefore found that the said tender was insufficient in amount.

3rd exception. The said master erroneously allowed interest upon the entire sum paid by said defendants prior and subsequent to the dates of payment respectively to the date of his report.

4th exception. The said master erroneously found from the evidence that said tender was not proved by complainant, whereas the same is proved by two witnesses and corroborated by other documentary evidence in the case, and the only denial thereof is an evasive and disingenuous answer of one of the defendants, none of the others having been interrogated or testified on the subject.

5th exception. The said master should have found from the evidence that the tender was in fact made; that the amount tendered was sufficient to stop interest on all payments made prior to August 7, 1882.

6th exception. Said report is otherwise insufficient and contrary to the law and evidence. In all or some of which particulars the said complainant is advised that the said master's report is illegal and insufficient and ought to be overruled in those respects, and a decree entered requiring merely the payment by complainant as a condition of setting aside the tax sales and deed of the said sum of $3,200, and such sums, if any, as may have been
49 paid since the date of said tender, with interest on said last-named sums.

Respectfully submitted. ALLAN C. STORY,
Solicitor and of Counsel for Complainant.

(Endorsed:) Filed Oct. 24, 1888. Wm. H. Bradley, clerk.

50 Afterward, to wit, on the twenty-ninth day of October, 1888, came the defendants, by their solicitors, and filed in said clerk's office their exceptions to the master's report in said entitled cause; which said exceptions are in the words and figures following, to wit:

Defendants' Exceptions.

Circuit Court of the United States, Northern District of Illinois.

AUGUSTUS RUSS
v.
JOHN CARNE, JR., EDWIN DRURY, HIRAM COOMBS, ISAAC C. OGDEN, and E. F. C. KLOKKE.

Exceptions taken by the defendants to the report of the master in chancery, John I. Bennett, Esq., to whom this cause was referred to take proof, &c., by an order made herein on April 21, 1887, which report is dated October 1, 1888.

1st. For that the master has found that the "notice was confessedly not served upon John K. Pollard as required by law,"

whereas the evidence shows that the reason said Pollard was not served with notice was that upon diligent inquiry he could not be found in Cook county.

2nd. For that the master has found that "the evidence does not show that the notices were served upon William Brown, who
51 is shown to have been in possession of the premises at a time when the notice should have been served," whereas by the evidence it does not appear that William Brown "was in possession of a part of the premises at a time when the notices should have been served."

3rd. For that the master has found "from the evidence, therefore, that the provisions of the revenue law with respect to notices of non-redemption from the sale upon which the tax deed was issued was not in compliance with the requirements of the constitution and laws of this State, and that on that account the deed is void and a cloud upon the title of the complainant," whereas the evidence shows that the requirements of the constitution and laws of this State in respect to notices for redemption from tax sales of lands for taxes or special assessments were substantially complied with.

4th. For that the master has found as follows: "The sale of the same premises to defendant Ogden October 1, 1880, upon which the certificate issued October 11, 1880, while said defendant claimed ownership by the former tax deed, would, I think, make the case fall within the rule that a tax purchase by the owner of land must be considered merely as a payment of the taxes and entitles the complainant to a cancellation of the certificate upon payment of the amount paid at the latter sale and subsequent tax payments, with equitable interest upon the several amounts so paid;" whereas the master should have found that if the tax deed issued
52 to the defendant Ogden and bearing date March 16, 1880, is held not to confer ownership upon said Ogden, but is invalid as a paramount title and is a cloud upon the title of complainant, then said complainant can redeem from the sale of October 1, 1880, only upon the statutory conditions applicable to such redemptions.

5th. For that the master has found, "Inasmuch as there is a failure of proof as to the dates of these two payments made in 1882, and no presumption can be entertained to help out the want of proof, I have only allowed defendant Ogden interest on these payments from the last day of that year;" whereas the interest on said sums paid for taxes in 1882 should be computed from the last day before the insufficient tender is shown to have been made by the complainant, to wit, August 6, 1882.

6th. For that, although the master has found that "various sums are proven to have been paid by defendant Ogden for various purposes other than in tax purchases and subsequent payment of taxes on these lots," yet the master has "disallowed all claims for such payments;" whereas such claims should have been allowed, since said payments were made to protect and preserve the property and will inure to the benefit of complainant if said deed to Ogden, dated March 16, 1880, should be declared a cloud upon com-
53 plainant's title and he be allowed to redeem from the tax sale of Oct. 1, 1880.

7th. For that the master charges complainant for the purpose of redemption from the tax sales of September 12, 1877, and October 1, 1880, upon the former of which the deed sought to be set aside as a cloud upon complainant's title is based with only the amounts of the purchase-money at said tax sales; whereas said complainant, having failed for two years to redeem from either of said tax sales, should, in pursuance of section 242, chapter 120, Revised Statutes, be charged in each case with the purchase-money increased by the penalty of one hundred per centum and upon such total interest at the rate of ten per centum should be allowed in respect of the former sale from September 12, 1879, and in respect of the latter from October 1, 1882.

8th. For that the master has found that interest should be computed on the several amounts paid for taxes prior and subsequent to October 1, 1880, the date of the second sale, at the rate of six per cent. per annum; whereas such interest should be computed at the rate of ten per cent. per annum.

9th. For that the master has found that the total amount which complainant should pay for redemption from such tax sales to be $5,700.67; whereas if the errors heretofore pointed out in his said report were corrected the amount would be much larger.

54 10th. For that the master has allowed the complainant to have said tax deed set aside as a cloud on his title and to redeem from the tax sale of October 1, 1880, upon terms that are inequitable and do not afford fair, adequate, and just compensation for their expenses and outlays on account of said purchases at said tax sales and to protect said property.

Wherefore the said defendants do except to the said report and appeal therefrom to the judgment of this court.

SMITH & HARLAN,
Solicitors for Defendants.

(Endorsed:) Filed Oct. 29, 1888. Wm. H. Bradley, clerk.

55 Afterwards, to wit, on the eleventh day of January, 1890, in the December term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

AUGUSTUS RUSS
vs.
JOHN CARNE, JR., *et al.* } In Chancery.

Now come the parties herein, by their solicitors, and now come on to be heard the exceptions filed to the master's report, and, after hearing the arguments of counsel, the court takes the same under advisement.

56 *Decision of Judge Gresham.*

I. I find that the deed of March 16, 1880, is invalid, because J. K. Pollard, in whose name the property was assessed, was not served with the statutory notice.

II. I find that the sale of October, 1880, was invalid, because it was in part for the taxes of 1873, 1874, & 1875, the property having been sold in 1877 for the non-payment of taxes for 1876. When the property was sold in 1877 for the taxes of 1876 it ceased to be charged with the taxes for prior years.

III. I find that before this suit was brought, viz., Aug. 7, 1882, the complainant tendered to the defendant $3,200, which was then the full amount the defendant was entitled to receive, including interest.

IV. I find that within a short time after the commencement of this suit, to wit, the — day of August, 1882, the defendant paid $744.44 on taxes which had accrued upon the property subsequent to the last alleged tax sale.

V. I find that the complainant is entitled to the relief prayed for upon paying into court for the benefit of the defendant Ogden the amount tendered, viz., $3,200 and the additional amount, $744.44, with interest on the latter amount from Aug. 10th, 1882, to the present date, with 6 per cent. interest thereon.

A decree will be prepared accordingly, each party paying half the costs.

W. Q. GRESHAM.

57 Afterwards, to wit, on the twentieth day of May, in the adjourned May term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Decree.

AUGUSTUS RUSS *vs.* JOHN CARNE, JR., ELEVE DRURY, HIRAM COOMBS, ISAAC C. OGDEN, and E. F. C. KOONCE.	In Chancery.

This cause having heretofore come on to be heard upon the bill of complaint of the said complainant, the answers of the said defendants respectively and the replication of complainant thereto, and upon the report of John E. Bennett, Esq., master in chancery, to whom the same was heretofore referred, and the exceptions on behalf of the said complainant, as well as those on behalf of the said defendants, filed to the said master's report, and the court, being fully advised in the premises, finds all and singular the matters and things in said bill of complaint contained to be true as therein stated, and that the complainant is entitled to the relief sought; that the said deed of March 16th, 1880, issued by said defendant E. F. C.

Klokke to the said Isaac C. Ogden, purporting to convey the premises described in said bill as lots 13 and 14 in block 5 in
58 Seaman's subdivision of block 5, and the west one-half of block 4 and the west 140 feet of block 6, in the assessors' division of the northwest quarter of fractional section 22, town. 39 north, range 14 east, of the 3rd P. M., in Chicago, Cook county, Illinois, is illegal, null, and void, because the proper statutory notice was not given to the assessee of said premises prior to the expiration of the period of redemption from the tax sales provided by law.

And the court further finds that the sale of said premises as mentioned in the certificates issued by the county treasurer of Cook county to the said John Carne, Jr., on or about the 11th of October, 1880, and now owned by said Ogden, was illegal and void, because the taxes for the years 1873, 1874, and 1875, respectively, for which in part said premises were sold, as mentioned in said certificates, were no longer a lien and charged upon said premises after the sale of the said lands, in 1877, for the taxes of 1876, under which the deed to Ogden above mentioned purports to have been issued.

The court further finds that on the 7th of August, 1882, and prior to the commencement of this suit, the complainant tendered to the defendants the sum of thirty-two hundred dollars in lawful money of the United States in full discharge of all liens and claims upon said premises by virtue of the respective sales named in the said deed and the said certificates, but which the defendants refused to accept, which the court finds was the full amount which
59 the defendants were entitled to receive, including interest to the time of such tender.

The court further finds that after the commencement of this suit, to wit, on the 10th day of August, 1882, the defendant Isaac C. Ogden paid the sum of seven hundred and forty-four dollars and forty-four cents for taxes assessed upon said premises, which payment was made in order to protect his said purchases of said lands, which sum, with interest thereon from said date at six per cent. per annum, the said defendant Ogden is also entitled to receive in addition to the said sum of thirty-two hundred dollars, the amount of the tender aforesaid, as a condition for the removal of the said deed and sales in the said bill mentioned, which constitute a cloud upon the title of the complainant in and to the said premises.

It is further ordered and decreed that the complainant is entitled to the relief prayed for and to have the said tax sales and certificates and the tax deed hereinabove mentioned removed as clouds upon his title to the said premises, and that upon payment into court of the said sum of thirty-two hundred dollars and the further sum of seven hundred and forty-four dollars and forty-four cents and interest on said last-named sum only from the 10th day of August, 1882, to the time of such payment into court, for the benefit of said defendant Isaac C. Ogden, the said deed from the said Klokke to the said Ogden in said bill of complaint described, and also
60 the said tax certificates issued by the county treasurer of Cook county on or about October 11th, 1880, to the said John Carne, Jr., and by the said Carne transferred to and since owned by

the said Ogden, purporting to show a sale of said premises for taxes, be, and the same are hereby, canceled, extinguished, and held for naught, and the injunction heretofore issued herein by which the said defendants were enjoined and restrained from issuing or causing to be issued any tax deed upon the certificate of tax sale made on or about October 11th, 1880, certifying to the sale of lots 13 and 14 in block 5 in the assessors' division of the northwest fractional quarter of section 22, town. 39 north, range 14 east, of the 3rd P. M., and from assigning, transferring, or disposing of the said tax certificate, be, and the same is, in all respects from the time of the payment of such money into court made perpetual, and each and all of the said defendants, their agents and servants, are from thenceforth forever enjoined and restrained from asserting or claiming any title to or benefit in the said described premises through, under, or by virtue of either the said tax deed of March 16th, 1880, or of the sale named in the said tax certificates, and the same are, and each of them is hereby, declared extinguished.

And it is further ordered, adjudged, and decreed that the costs of this suit be divided and paid equally by and between the said complainant and the said defendants, and that each may have execution therefor as against the other.

61 Whereupon the defendants pray an appeal herefrom to the Supreme Court of the United States, which is allowed upon their filing an appeal bond herein in the penal sum of five hundred dollars within thirty days, with surety to be approved by the court.

62 Afterward, to wit, on the twenty-first day of May, in the adjourned May term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

AUGUSTUS RUSS
vs.
JOHN CARNE, JR., *et al.* } In Chancery.

Now comes the said complainant, by Mr. Story, his solicitor, and presents the receipt of the clerk of this court, showing that the complainant has, in accordance with the decree entered in this cause on yesterday, paid into court the sum of four thousand two hundred and ninety-one dollars and eighty-four cents.

63 Afterward, to wit, on the seventeenth day of June, 1890, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois.

AUGUSTUS RUSS }
vs.
JOHN CARNE *et al.* }

It is hereby stipulated that the time for filing the appeal bond in the above-entitled cause may be extended twenty days, and that an order to that effect may be entered by the court.

ALLAN C. STORY,
Solicitor for Complainant.
SMITH & HARLAN,
Solicitors for Defendants.

(Endorsed:) Filed June 17, 1890. Wm. H. Bradley, clerk.

64 On the same day, to wit, on the seventeenth day of June, in the adjourned May term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

AUGUSTUS RUSS }
vs. } In Chancery.
JOHN CARNE, JR., *et al.* }

Upon stipulation this day filed, the time to file an appeal bond herein is further extended twenty days.

65 Afterward, to wit, on the seventh day of July, 1890, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

In the Circuit Court of the United States for the Northern District of Illinois.

AUGUSTUS RUSS }
v. }
JOHN CARNE, JR., EDWIN DRURY, HIRAM COOMBS, ISAAC C. OGDEN, and I. F. C. KLOKKE. }

It is hereby stipulated and agreed by the parties in said cause that an order may be entered therein *nunc pro tunc* as of the 15th

day of May, 1890, substituting a party defendant in said cause, Henry Wulff, county clerk, in place of E. F. C. Klokke, and also substituting as defendants' solicitors Messrs. Smith & Harlan, vice Smith & Pence.

ALLAN C. STORY,
Complainant's Solicitor.
SMITH & HARLAN,
Defendants' Solicitors.

(Endorsed:) Filed July 7, 1890. Wm. H. Bradley, clerk.

65 On the same day, to wit, on the seventh day of July, in the July term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

AUGUSTUS RUSS
vs. In Chancery.
JOHN CARNE, JR., *et al.*

Upon stipulation this day filed it is ordered that Henry Wulff, county clerk, be substituted as a party defendant in the place of E. F. C. Klokke, and that Messrs. Smith & Harlan be substituted as defendants' solicitors in the place of Messrs. Smith & Pence, and that this order be entered *nunc pro tunc* as of the fifteenth day of May last.

67 On the same day, to wit, on the seventh day of July, 1890, there was filed in said clerk's office an appeal bond in said entitled cause, which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, John Carne, Jr., Isaac C. Ogden, Hiram Coombs, Edwin Drury, and Henry Wulff, county clerk, and Jno. Maynard Harlan, are held and firmly bound unto Augustus Russ in the full and just sum of five hundred dollars, to be paid to the said Augustus Russ, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of June, in the year of our Lord one thousand eight hundred and ninety.

Whereas lately, at a term of the circuit court of the United States for the northern district of Illinois, held at Chicago, in said district, in a suit depending in said court between Augustus Russ, a citizen of the State of Massachusetts, complainant, and John Carne, Jr., Edwin Drury, Hiram Coombs, citizens of the State of Illinois; Isaac C. Ogden, a citizen of the State of New York, and Henry Wulff, county clerk, defendants, a decree was rendered against the said de-

fendants, and the said John Carne, Jr., Isaac C. Ogden, Hiram
68 Coombs, Edwin Drury, and Henry Wulff, county clerk, prayed an appeal in the aforesaid suit in open court, at the term of the entry of said decree, and said appeal was thereupon allowed to the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said John Carne, Jr., Isaac C. Ogden, Hiram Coombs, Edwin Drury, and Henry Wulff, county clerk, shall prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

JOHN CARNE, JR. [SEAL.]
ISAAC C. OGDEN. [SEAL.]
HIRAM COOMBS. [SEAL.]
EDWIN DRURY. [SEAL.]
HENRY WULFF, *County Clerk.* [SEAL.]
JNO. MAYNARD HARLAN.

Approved by—
W. Q. GRESHAM.

(Endorsed:) Filed July 7, 1890. Wm. H. Bradley, clerk.

69 Circuit Court of the United States, Northern District of Illinois.

AUGUSTUS RUSS
vs.
JOHN CARNE *et al.* } Master's Report of Evidence.

To the honorable the judges of said court:

In pursuance of the order of reference made to me as master April 21, 1887, I appointed the 22nd day of July, 1887, at my office, for a hearing. Whereupon the parties appeared, by their respective solicitors, Allan C. Story, Esq., appearing on behalf of the complainant and George W. Smith, Esq., of the firm of Smith & Pence, Esqs., appearing on behalf of the defendant. Whereupon the complainant introduced certain documentary evidence and also produced certain witnesses, who testified in behalf of the complainant.

I would respectfully further report that from time to time thereafter, either upon voluntary appearance of the parties or adjournment or upon notice, parties appeared at divers other times and introduced proofs in the above-entitled case, until December 27, 1887, when the proofs were closed.

I hereto append and make a part of this report of evidence the testimony of the several witnesses who appeared before me and the documentary proofs introduced before me by the respective parties.

70 The several witnesses testifying before me were by me duly sworn before testifying; their evidence was taken down by a stenographer and written up in my presence and by me afterwards

verified. The several witnesses signed their evidence when so written up except where the signatures of witnesses were waived by agreement of counsel and the testimony of such witnesses in this case hereto annexed is a true and correct statement of the evidence of said witnesses respectively so testifying before me.

The exhibits attached to this report are the same offered by the respective parties.

I make and file cotemporaneously herewith a report of my findings upon this evidence in pursuance of the order of reference and ask that the same may be treated as a part hereof.

All of which is respectfully submitted.

JOHN I. BENNETT,
Master in Chancery of the United States Court
for the Northern District of Illinois.

Oct. 1, 1888.

Circuit Court of the United States, Northern District of Illinois.

AUGUSTUS RUSS)
vs.
JOHN CARNE, JR., *et al.*)

By agreement of counsel in above-entitled case Alen C. Story, Esq., on behalf of the complainant, and Geo. W. Smith, Esq., on behalf of the defendants, the parties, by their said counsel, appeared before me on the 22nd day of July, 1887, at 2 o'clock p. m., when the following proceedings were had:

71 By Mr. STORY: I will offer in evidence a decree of the circuit court of Cook county, Illinois, in burnt record, case No. 400, being the case of Augustus Russ *vs.* Arthur D. Rich and Stephen W. Rasson and others. Said complainant now here demurs his petition as to said Isaac C. Ogden. That decree was entered on the 21st of February, 1887, marked Complainant's Exhibit "A."

(This offer was subsequently withdrawn.)

Mr. Smith objects to the introduction of the decree as incompetent and irrelevant.

I next offer as Complainant's Exhibit "B" warranty deed dated March 20, 1872, Galvin P. Austin and Arthur D. Rich and Esther Rich, his wife, to Augustus Russ, of Boston, covering premises in question. It was acknowledged on the 4th and 8th days of May, respectively, 1872, and recorded on the 13th of May, 1872, in Book 58 of Records, page 74.

This deed was identified by the master & retained by compl't's counsel to be produced on the trial.

I will next offer a certified copy of the collector's book and the warrant attached thereto for the taxes of 1872 and prior years, certified by Henry Wulff, county clerk, June 22, 1887, marked Complainant's Exhibit "C."

Also certified copy of the collector's book and warrant for the

taxes of 1874 and prior years, certified same date by the county clerk and county judge, marked Complainant's Exhibit "D."

72 Also a certified copy by Henry Wulff, clerk of the county court, of the collector's book and the warrant attached of the taxes of 1875 and prior years; certificate dated June 18, 1877; marked Complainant's Exhibit "E."

Also a certified copy of the judgment record of the county court of Cook county, made by the clerk and judge, and separate certificates for the taxes of 1876, as far as same relates to the premises in question, marked Complainant's Exhibit "F."

Also certified copy of the judgment record by the same officers of the county court, Cook county, for the taxes of the year A. D. 1879 and prior years, as far as relates to the premises in question, marked Complainant's Exhibit "G."

Also a certified copy of the records of the same court by the same officers of the sale and redemption record of the taxes of 1879 and prior years, marked Complainant's Exhibit "H."

Also a certified copy from the same officers of the same court of the appeal, notice, and affidavits, together with the sale certificates upon which tax deed No. K, 1080, dated March 26, 1880, was issued to Isaac C. Ogden by Klokke, so far as relates to premises in question, marked Complainant's Exhibit "I."

On account of the absence of witness the further taking of testimony was postponed by agreement of counsel until Monday, July 25, next at eleven o'clock a. m.

73 MONDAY, *July 25th*—eleven a. m.

Witness, Mr. EMERSON.

Direct examination by Mr. STORY:

Q. What is your full name?
A. William H. Emerson.
Q. What is your business, Mr. Emerson?
A. I am a painter.
Q. Do you know the premises lots thirteen (13) and fourteen (14), in Seamen's subdivision of block five (5), assessors' division of the northwest quarter (¼) of fractional section twenty-two (22), town. thirty-nine (39), range fourteen (14)?
A. Yes, sir.
Q. How long have you known that property?
A. Since the fire of 1871.
Q. Who occupied it at the time of the great fire of 1871?
A. Well, I cannot recall the name now; a lady.
Q. Well, under whom was she claiming?
A. A. D. Rich.
Q. Arthur D. Rich?
A. Yes, sir.
Q. Do you recollect the time that Mr. Russ, complainant in this suit, bought the property and from whom?
A. Bought it from A. D. Rich.

Q. Well, at the time that Russ bought the property from Rich and somebody else do you remember who the other party was?

A. Galvin P. Austin.

Q. At the time that Rich bought that property what was done in the way of giving possession, if you know?

A. Well, he gave possession to me as his agent.

Q. As whose agent?

A. Augustus Russ' agent.

74 Q. Who has had possession and control of the property since that time on behalf of Mr. Russ?

A. I have.

Q. Entire control?

A. Yes, sir.

Q. From that time until now?

A. Yes, sir.

Q. Do you remember the deed from Austin and Rich to Russ?

A. Yes, sir.

Q. Now, look at this Exhibit "B" and state if you ever saw that before.

(Witness looks at it.)

A. Yes, sir; I should say this is the deed he gave me.

Q. Who?

A. Arthur D. Rich.

Q. For whom did he give it to you?

A. For Augustus Russ.

Q. Did you ever know J. K. Pollard?

A. Well, I have known him lately—within a year.

Q. Known him by sight?

A. Yes, sir.

Q. How long have you known him by sight?

A. Oh, two or three years.

Q. Do you know of your own knowledge where Pollard lived?

A. No, sir; I do not.

Q. Do you know whether he ever lived on these premises?

A. I do not know.

Q. Did you ever, as the agent for Mr. Russ, make any tender to Carne & Drury or take any action in that direction? If so, state what you did.

A. August 7, 1882, I tendered them $3,200.00.

Q. Tendered whom?

A. Carne & Drury, at their office, for the taxes.

Q. For what?

A. Tax deed.

Q. In what shape did you tender it?

A. Currency.

Q. For whom did you tender it?

A. Augustus Russ.

75 Q. With regard to the bringing of the suit in the court by Mr. Russ, when was it this tender was made?

A. The same day I directed you to commence.

Q. Was it before or after the suit was brought?
A. It was after the suit was brought.
Q. What was?
A. I do not understand your question.
Q. Service was made on the 11th day of August. You say you made this tender on the 7th of August. How are you able to fix the date?
A. I went and drew the money out of the bank and carried it to Carne & Drury.
Q. With reference to the date of the check, when did you carry it?
A. The same day.
Q. This is the check on which the money was obtained?

(Exhibits the check.)

A. Yes; Mr. Russell went with me.
Q. Did you keep account of the moneys that you received from that building? I see them signed "Emerson, trustee."
A. "Trustee" is the way I kept my own bank account, and do to this day; and this is the way I did Mr. Russ'.
Q. Did they accept the money?
A. They did not.
Q. Then what was done?
A. Then I went back to your office, and you said you would commence suit. I tendered this under your instructions.
Q. Do you know whom I represented then?
A. Mr. Augustuss Russ.

76 Cross-examination by Mr. SMITH:

Q. Mr. Emerson, are there any buildings on this property?
A. One frame house and an old frame building that is used as a paint and carpenter shop.
Q. How large is the frame house in front; what sort of a building?
A. It is a twelve-room house; two-story frame building.
Q. How long has it been so?
A. It set there when I first went there; it has been there for some time.
Q. When did you first know the property?
A. Well, a month or two before it was purchased, in the spring of 1871.
Q. The spring of 1871 or 1872?
A. 1872.
Q. This deed bears date March 20, 1872.
A. March 20, 1872.
Q. Your attention was first called to the property before 1872?
A. Yes, sir.
Q. You say at this time there was a two-story frame building on the front part of the lot, and a paint and carpenter shop in the rear?

A. At that time it was used as a stable.
Q. This rear building?
A. Yes, sir; after that I built a one-story drug store in front.
Q. How did you happen to have any interest in the property at that time—that is, how was your interest excited in the property?
A. From the real-estate broker, F. A. Bragg.
Q. Did F. A. Bragg go to you about it?
A. Yes; he did.
Q. For what purpose?
A. To sell it.
Q. What did he say?
A. Wanted me to buy it.
Q. What did you do about it?
A. Bought it.
Q. Who is Mr. Austin?
77 A. He is a party that owned the property in connection with A. D. Rich.
Q. And now you say you bought it; what do you mean by that?
A. I mean just what I say.
Q. Do you mean to say you bought it yourself?
A. Yes; I bought it myself for Augustus Russ.
Q. Who was Augustus Russ?
A. Of Boston.
Q. Had he been here?
A. No, sir.
Q. How did you know he wanted the property?
A. I acted as his attorney.
Q. Had he instructed you to buy it?
A. He told me I could buy and sell
Q. Did you have a power of attorney from him?
A. Yes, sir.
Q. Is it on record?
A. It is.
Q. Where is the original of it?
A. I think he has it.
Q. What was paid for the property?
A. $33,000.00.
Q. How was that paid?
A. $17,000.00 cash and $16,000.00 mortgaged.
Q. Was there a mortgage on the property or did Mr. Russ make it?
A. Mr. Russ made it.
Q. You say that about $17,000.00 were paid and $16,000.00 secured by mortgage; who executed that mortgage?

Objected to because the mortgage is the best evidence.

Mr. STORY: Were you present when it was executed?
A. I certainly was, and, as attorney-in-fact, signed for Augustus Russ "by Mr. Emerson, as attorney-in-fact," as I did all of his business.

Mr. SMITH:

Q. Did you pay the money at that time?

A. I did—$17,000.00.

78 Q. Where did you get the money?

A. I got it in my pocket.

Q. Was that your own money or did you get from somebody else?

Objected to as wholly immaterial.

A. I got it from Augustus Russ.

Q. You say you have lived in this house since that time?

A. I have lived in it the greater part of the time.

Q. Have you paid any rent for it?

A. I accounted with Mr. Russ.

Q. What do you mean by that?

A. I mean I have had settlements with him.

Q. Have you received any moneys for him?

A. Yes, sir.

Q. From what sources?

A. From rents.

Q. What rents—on this building?

A. Yes, sir.

Q. There had been other tenants in it besides yourself?

A. Yes, sir.

Q. Then you have collected the rents?

A. I have not collected for him.

Q. Have you paid any charges against the property since that time?

A. I have paid all that has been paid. I have controlled the property exclusively.

Q. You have kept an account, you say, with the Traders' bank?

A. Yes, sir; and other banks.

Q. And you are named as trustee?

A. Yes, sir.

Q. Has that been your personal account or an account of this property?

A. My personal account. I had that trust deed for other matters.

Q. Now, have you any interest in this property, Mr. Emerson?

A. I may have an undivided interest.

79 Q. How long have you had that interest?

A. Well, right through.

Q. Since the beginning of 1872?

A. Since the beginning.

Q. What do you mean when you say you may have an undivided interest?

A. I mean just what I say. I object to answering. It is a private matter.

Answer subject to objection.

Q. Now, please state, Mr. Emerson, what your interest has been and is in this property.

A. Well, I don't own the property and never have, but Mr. Russ' money bought it, and if I should ever sell the property and make something out of it I would probably get something. The money I offered to tender came from Mr. Russ and was returned to him.

Q. Have you any agreement with Mr. Russ? I do not ask what it is, simply if you have any agreement.

A. I do not know what you mean by that. Do you mean in relation to this property?

Q. This piece of property.

A. I do not know whether I have any written agreement. I do not think I have.

Q. Have you any writings or has Mr. Russ written to you in any way upon the subject of this property and made you any offer with reference to it?

Objected to.

A. I have had a good deal of correspondence with him in regard to the property.

Q. Have you got the correspondence now? Have you letters from him?

A. I have got letters from him.

Q. I will ask you to produce the letters.

A. They are private letters.

Objected to.

80 Question reserved.

Mr. SMITH: I will ask the master to make ruling upon the witness to produce the letters to which he refers in his testimony.

Mr. STORY: The witness is not a party to the suit.

By the MASTER: I would not make the ruling without further time for the witness to produce such letters, and this has not been given.

Q. I will ask Mr. Emerson if he will produce the letters which he has from Mr. Russ.

A. No, sir; they are private letters.

Mr. SMITH: Now, I repeat my request to the master to require the production of the letters.

Objected to.

Question reserved.

Q. Mr. Emerson, you have stated that you have made the tender on a certain day in August, 1882, of the sum of $3,200.00?

A. Yes, sir.

Q. To whom did you make that tender?

A. At Carne & Brudy's office, to Mr. Carne, a tall dark gentleman.

Q. Who was present at the time you offered the $3,200.00?

A. I think it was Mr. Carne; there was a man came up (interrupted)——

Q. Are you sure it was Mr. Carne?

A. I am sure.
Q. I am asking if you can state definitely who the person was?
A. I can say he represented Carne & Drury.
Q. But you are not certain which one it was?
A. I am not certain which one it was, but it was one of the firm.
Q. One of the then firm of Carne & Drury?
A. Yes, sir.
Q. How did you happen to make that tender of the sum of $3,200.00?
A. By Mr. Russ' attorney, Mr. Story.
Q. Was there any computation made by which you arrived at that sum?
81 A. Yes, sir. Mr. Russell and myself sat down and figured it out.
Q. Who was Russell, Mr. Emerson?
A. Justice Russell, who was in Mr. Story's office.
Q. Why did you tender the sum of $3,200.00?
A. To pay that sum they claimed as taxes.
Q. Who claimed it?
A. Carne & Drury.
Q. Did they claim there was $3,200.00 due?
A. They claimed just that amount. I do not understand.
Q. I want to know what was said, exactly.
A. All that was said—I tendered him the $3,200.00 and he would not take it.
Q. I want to know how you got at that sum of $3,200.00?
A. Mr. Story will tell you about it.
Q. How did you get at it?
A. I told you by figuring up the taxes.
Q. Do you mean now, Mr. Emerson, that was the sum you claimed to be owing them?
A. No, Mr. Story—it was his interest.
Q. Do you mean to say that that was the sum which Carne & Drury claimed was due them?
A. No, I don't pretend to say it was.
Q. They claimed a great deal more than that?
A. Oh, yes.
Q. That was before the two years run out from the time of the sale?

Objected to.
Objection sustained.

Q. Do you remember when the sale was?
A. No, sir; I do not.
Q. You do not know anything about the sale for taxes?
A. I do not know anything about it.
82 Q. What rents have been paid for this property?

Objected to.
Question withdrawn.

Q. Mr. Emerson, where have you lived since 1872?

A. In Chicago.
Q. You have been in business here?
A. Yes, sir.
Q. Have you paid any taxes on this property during that time?
A. Yes, sir.
Q. Do you know what taxes you paid?
A. I did; but I do not remember now.
Q. Have you any book or statement showing?
A. Oh, I have a tax receipt unless I may have sent them to Russ. I paid all taxes except what your firm paid.

By the MASTER: Referring to the motion to order the witness to bring in correspondence with complainant, Russ, I will sustain the motion to this extent, that the witness examine for any correspondence relating to a purchase of this property or any interest, and in case he shall find such correspondence will produce the same before me.

Q. Mr. Emerson, I will ask you if you are familiar with the values of property in the vicinity of this property from 1873 down to the present time?
A. No; I am not.
Q. Do you know the value of this property?
A. Now?
Q. In 1873?
A. No.
Q. How far back do you know?
A. From along one year.
Q. One year from the present time?
A. Yes.
Q. Well, you know the value of the property in that vicinity during the past year, a fair reasonable amount of value?

83 A. $35,000.00 it has been sold for. Those are the best figures I can give you. I do not call myself an expert on property valuations.

Q. Do you know what was the value of this property in the fall of 1880?
A. No, sir.
Q. A fair reasonable market value in the fall of 1880?
A. I considered it was worth $33,000.00, just what was paid for it.

The further taking of evidence in this case was adjourned until Wednesday, July 27th, at eleven o'clock a. m.

84 WEDNESDAY, *July* 27, 1887—2 o'clock p. m.

Complainant, by his solicitor, A. C. Story, Esq., appeared in the above-entitled case in pursuance of adjournment, attended by several witnesses, and I allowed the complainant to proceed and take the evidence of his witness present in chief, it being understood that when the evidence was written up the defendant would have the right, if he so desired, to have the witnesses brought back for cross-examination. It is also understood that the defendant has the

right to enter objection hereafter to any of the evidence so taken on the part of the complainant at this time.

Direct examination of Mr. MOORE by Mr. STORY:

Q. State your full name.
A. Daly S. Moore.
Q. What is your business, Mr. Moore?
A. Now, the same as it was then, railroad contractor.
Q. Where have you resided for the last twenty years?
A. In Chicago.
Q. Since what time have you resided here?
A. I came here in '46.
Q. 1846?
A. Yes, sir.
Q. Do you know J. K. Pollard?
A. I do.
Q. How long have you known him?
A. I have known him since 1849.
Q. Where has he lived since 1849?
A. In Chicago.
Q. Where did he have an office during that time?
A. He was in business in the grocery trade a long time ago.
Q. Since he was in the grocery business where has he made it his headquarters?
A. Well, how far back do you want to go? I have not kept much track of him.
85 Q. When was that?
A. 1879.
Q. What time in 1879?
A. During the whole of the year.
Q. Where did he have business headquarters then?
A. 79 Dearborn St.
Q. In this city?
A. Right here on this street.
Q. This street where we are now?
A. Yes, sir.
Q. What kind of business was he engaged in?
A. The business that he was in—railroad contractor.
Q. Railroad contracts?
A. Yes.
Q. Were you jointly interested in the same?
A. Yes, sir.
Q. How frequently did you see him during the most of the year?
A. Most of the time: only when I was away.
Q. Do you know of his being away at that time?
A. I do not think he left the city to my knowledge. I do not think he did.
Q. During the spring of 1879, where did John K. Pollard reside, if you recollect?
A. I never knew only as he told me. I never was at his house.

Q. Where did he tell you he lived?
A. On Calumet Ave.
Q. Do you remember the number?
A. No, I do not.
Q. You say you met him usually every day when you were in the city. Where did you meet him?
A. In an office; I forget the number of the office; at 79 Dearborn St., in this city.
Q. How long a time were you in his company during those days usually?
A. Well, the business part of the day.
Q. He was usually there during the business hours, you mean?
A. Yes, sir; he went out and in.

86 Q. You say you were jointly interested with him in business?
A. Yes, sir.
Q. Had you any difficulty at any time in meeting him in regard to business?
A. No; I never had; I do not think any one need have.
Q. Do you remember whether his name was in the directory that year as located at 79 Dearborn St.?
A. I do not think that I have ever looked.
Q. What was your firm at that time?
A. Moore, Coventry & Company. Mr. Pollard was the company.

Direct examination of Mr. RUSSELL by Mr. STORY:

Q. What is your business, Mr. Russell?
A. Counsel-at-law.
Q. How long have you lived in Chicago?
A. Nineteen (19) years.
Q. How long have you practiced law?
A. In Chicago?
Q. Yes.
A. During my whole lifetime.
Q. Were you at any time officing with me in the law business in this city?
A. I was.
Q. Were you at the time of the commencement of this suit by Carne and others?
A. I was.
Q. Do you remember of investigating an alleged tax deed or tax claim of Carne and Drury (and others) upon these lots thirteen (13) and fourteen (14), in block five (5), described herein?
A. I do.
Q. Do you remember of making a computation of the amount due in order to effect a redemption of the property referred to from these tax claims?

87 A. I remember it; yes.
Q. Do you remember of anything being done after that amount had been ascertained?

A. I know that I went with Mr. Emerson to Carne and Drury's office and made a tender of the amount which was computed by me to be due Mr. Carne.

Q. You knew Mr. Carne, did you?

A. I knew him by sight.

Q. Do you remember whether you tendered him exactly the amount that you computed as his due or whether it was still more?

A. I was just going to say that my recollection was that there was a little question as to whether there might have been more due, and more was tendered to him than our lowest figures, at any rate.

Q. You intended to tender *the* enough?

A. Yes.

Q. Do you remember about the date of the last tender?

A. I remember that it was August 7th, 1882—that is, I remember now that it was.

Q. Do you remember the amount tendered definitely?

A. Well, it was $3,200.00.

Q. That is your recollection?

A. That is my recollection.

Q. Do you remember upon what basis the amount was ascertained?

A. Well, I do not know what you mean by a basis.

Q. How did you get at the amount?

A. Well, I ascertained by deducting the various sales that had been made. I ascertained what they were from either looking over the county records or from other data that we have.

Q. And subsequent taxes paid?

A. And subsequent taxes paid. I know we went over the whole business; it was quite a considerable job.

88 Q. On what basis did you arrive at that amount?

A. I took the amount which the land was sold for and also the subsequent payment of taxes and all other charges which the purchasers had paid upon that. I computed the interest that was allowed by law to purchasers, adding, of course, the whole together. I remember that check, and he showed the check to me and went and drew the money while I was in the office and came back with the money.

Redirect examination of Mr. EMERSON by Mr. STORY:

Q. Mr. Emerson, the other day when you were examined you offered a check, and counsel on the other side took it and examined it. I will ask you to read off the check so that it may go into the minutes here.

A.—

"No. 1255. CHICAGO, *August 7th*, 1882.

Traders' Bank of Chicago

Pay to the order of William H. Emerson thirty-two hundred ($3,200.00) dollars.

(Signed) WILLIAM H. EMERSON, *Trustee.*"

Q. Is it endorsed by any one?
A. Endorsed by me.
Q. You have stated that you got the money on this check?
A. Yes, sir.
Q. When did you get the check?
A. I got it back the next writing-up day.
Q. From the bank?
A. From the bank.
Q. Were you served with a notice signed by Hiram Coombs, referred to in Complainant's Exhibit "J" herein, by Adolph Cunz on the 5th of May, 1879?
A. No, sir; I was not.
Q. Do you remember where you were at that time?
A. I was in Chicago.
Q. Were you living upon those premises?
89 A. Yes, sir.
Q. Was your wife living with you at the time?
A. Yes; she was.
Q. What was her name?
A. Sarah B. Emerson.
Q. I show you this notice, telling that claim was served upon you.

(Witness looks at the notice.)

Q. Have you examined the directory for the year 1879 to see whether the name of J. K. Pollard was in it or not?
A. I did; I find it was.
Q. What did you find?
A. I find the name of John K. Pollard, of Moore, Coventry & Co., room 23, 79 Dearborn St.; house, 326 Calumet Ave.; I saw it was in the directory.
Q. What directory?
A. Chicago city directory.
Q. For what year?
A. 1879. I looked over where Mr. Moore and Mr. Coventry and Pollard were and found his name as a partner; that was how I found Mr. Moore.
Q. You have read that notice?
A. Yes, sir.
Q. And no such notice was ever served upon you?
A. No, sir.
Q. Served as any such notice upon you personally?
A. No, sir.

90 Direct examination of Mrs. EMERSON:

Q. State your full name, please.
A. Sarah B. Emerson.
Q. Where do you reside, Mrs. Emerson?
—. 1255 Wabash Ave.
Q. Do you remember the description of that property as lots thir-

teen (13) and fourteen (14), in block five (5), of Seamen's subdivision?

A. I believe they call it so.

Q. This is the same property. Where did you reside in the month of May, 1879?

A. In Chicago.

Q. On this property?

A. Yes.

Q. Were you at any time during the month served with a notice by Thomas Cross of which this is a copy? I show witness the property notice referred to in Complainant's Exhibit "J," on page 11 of Exhibit "J." Witness looks at said notice.

A. I have not read it all through; but I was never served with any notice at all.

Q. You are positive about it?

A. Very.

Q. Had notice been served upon you it would have impressed you so you would have remembered it?

A. I think I should.

Q. Who else occupied these premises then? Was there a man named Wilson?

A. He rented the drug store.

Q. Did anybody else live on the premises beside yourself in 1879?

A. Yes; there was a party rented the upper floor of us by the name of Brown—William Brown.

Q. In the early part of the year was he there?

A. Yes; he was there three years.

91 Direct examination of ARTHUR D. RICH.

By Mr. STORY:

Q. I show you a deed, Exhibit "B" of complainant in this case, and ask you if you ever saw it before.

(Witness examines the exhibit.)

A. Yes, sir; I saw that already before.

Q. Are you the Arthur D. Rich named in that deed?

A. Yes, sir; I executed it, and my wife.

Q. At the time that deed was executed who was in possession of these premises?

A. I was in possession.

Q. From whom did you receive possession?

A. From Mr. Pollard.

Q. What Pollard?

A. J. K. Pollard.

Q. Did he live upon them?

A. He used to live there; yes, sir.

Q. How long a time do you remember his living there?

A. Mr. Pollard lived on the premises in Nov., 1856. I bought the property of him on the 16th day of Nov., 1866, and he did not give possession immediately—that is, he gave me possession, but I

executed him a lease and he lived on the property for some time afterwards. I cannot give you the exact time, but it was probably a year or two that I rented it to him.

Q. When you conveyed to whom did you give possession?

A. Well, I gave possessinn to Mr. Austin and I conveyed to him—that is to say, I have been Mr. Austin's agent for property in this town in various investments he has made, and I acted as his agent with reference to that property with him.

Q. To whom did Mr. Austin finally give possession?

A. Mr. Austin, through me, gave possession to Mr. Russ
92 or his agent when we conveyed in 1872.

Q. So that from Nov., 1866, when you bought from Pollard, up to the time of your conveying to Russ it was in the possession that you have mentioned?

A. Yes, sir; it was in the possession of myself.

Q. Do you remember about the premises longer than that?

A. O, yes; I remember that Mr. Pollard, with whom I had been acquainted for a number of years, had occupied the property as a residence for some years before that, but I cannot tell just how many years that is before 1866.

Q. Do you know where Pollard has lived these many years since you first knew him—in what city?

A. Well, I know he lived in this county. I think he lived out of town somewhere after he left that place.

Q. How long have you known him to live in the county?

A. I have known him some years before 1866.

Q. Since that time how long has he lived here?

A. I understand that he has lived here always.

Q. You frequently meet him on the streets?

A. Yes; meet him frequently.

Q. There has been no time so far as you are aware of when Mr. Pollard was not a resident of Chicago?

A. I think he has always been a resident here; I am quite sure since some time before 1866.

Q. Do you say you were the agent of Mr. Austin?

A. Yes, sir.

Q. Mr. Austin had a mortgage on the property?

A. He holds the trust deed now.

Q. Did he prior to 1879?

A. When I took it back for the purchase-money he gave
93 when the property was sold to Mr. Russ, and that is for $16,000.00, he still holds that.

Q. Do you remember the time when the premises had been bid in for taxes by Coombs or Carne and Drury when you had some talk with Mr. Emerson, agent of Russ, in regard to redeeming or making a tender; do you remember of advising him to make a tender?

A. Well, it is quite likely I may have had some talk. I have no particular recollection of it.

Q. How long have you known these premises in question?

A. Well, I have known the premises since '54.

Q. When?
A. Since 1854.
Q. Who owned them at this time—that is, who claimed to own them?
A. I suppose this Mr. Seamen owned them.
Q. You delivered a deed to him for the premises?
A. Yes.
Q. When Seaman sold, do you remember who he sold to?
A. Well, I do not know as I have any personal recollection except what the records show.
Q. Well, do you know who Pollard bought of?
A. Mr. Pollard appears by the abstract record to have bought of Mr. Seaman, and I know he did.
Q. Did you look over the title at that time?
A. At that time or soon after.
Q. Do you remember when Pollard bought?
A. Well, I do not want to trust my memory on that subject. I know it appears by the records that he bought in 1861. I know of his having possession of the property from about the year 1861 up to the time he sold to me.

The further taking of evidence in this case is adjourned to the — day of ——, 1887, at — .

94 Circuit Court of the United States, Northern District of Illinois.

AUGUSTUS RUSS
vs.
JOHN CARNE, JR., *et al.*

DEC. 27, 1887.

In pursuance of the annexed notice appeared Geo. W. Smith, Esq., of the firm of Smith and Pence, solicitors on behalf of defendants, attended by their witnesses, Jno. Carne, Jr., and Hiram Coombs, and it appearing by the said notice that complainant's solicitor had been duly notified, and the said defendant desiring to proceed in the examination-in-chief of his witnesses in the absence of complainant's solicitor, he was allowed to do so with the understanding and consent of the solicitors for the defendant that complainant's solicitor should have the right when the evidence-in-chief of said witnesses was written up to make any special or general objections to such evidence which he could have made had he been present at the examination and that he would be allowed to cross-examine said witnesses, the taking of testimony proceeded; whereupon JNO. CARNE was called, being duly sworn, and testified as follows, to wit:

Direct examination of JNO. CRANE, JR., by Mr. SMITH:

Q. What is your name, residence, and occupation?
A. Name, John Carne, Jr.; residence, Ridgeland, Cook county, Illinois; occupation, real-estate tax investor and abstract-maker.

Q. How long have you been engaged in that business?
A. Ten (10) or twelve (12) years.
Q. Are you associated with anybody in business now?
A. Yes, sir; Hiram Coombs.
95 Q. Did you have any other associates prior to the formation of your partnership?
A. Yes, sir; the firm was known as the firm of Carne & Drury.
Q. How long was that firm organized—how long did it continue?
A. In 1874; partnership was dissolved in 1886.
Q. Where did Carne and Drury have an office?
A. Had an office for many years in the Metropolitan block.
Q. Who were the members of that firm?
A. Myself, Edwin Drury, Hiram Coombs, and Horace G. Drury.
Q. Do you know Isaac C. Ogden, one of the defendants in this suit?
A. I do.
Q. Where does he live?
A. In New York.
Q. How long have you known him?
A. About 10 years.
Q. Has he ever lived in Chicago?
A. Not to my knowledge.
Q. Has Isaac C. Ogden done any business in Chicago or Cook county with reference to purchases at tax sales; and, if so, when did he commence with that business and how long did he continue in it?
A. Mr. Ogden furnished capital to Carne and Drury many years since for investment in Cook county taxes, and he has continued to do so ever since.
Q. Have the firms of Carne and Drury and Carne & Coombs made purchases for Mr. Ogden at the sales during the last ten years?
A. Yes, sir.
Q. When you speak of investments do you mean such purchases?
A. Tax purchases.
Q. State what Carne & Drury and Carne and Coombs, connected in such manner for Mr. Ogden, have been required to do in such business of investing in taxes. Give in your own language the chief features of the business which you have conducted for Mr. Ogden.
A. Mr. Ogden in furnishing money desired us to use our
96 own discretion in making investments.
Q. Well, did you have to investigate the records before making a purchase?
A. Every year where we have certificates of sale we have to pay the delinquent taxes and special assessments to protect these certificates of sale, and at the proper time it was our duty to examine the records to find the names of parties in interest and to have the legal notices served.
Q. Did you have to prepare affidavits for any purposes?
A. After the time expired for the redemption we furnished all

affidavits for the purpose of satisfying the county clerk that we obeyed the law.

Q. Well, was any examination of the records necessary prior to a purchase at tax sales?

A. No, sir.

Q. You simply bought as you found the land delinquent and offered?

A. As the lands were offered for sale by the county collector we bid for the same, paid the money, and took the tax certificates.

Q. Did you make any examination of maps prior to purchasing in order to see what lots it would be advisable to purchase for Mr. Ogden?

A. No.

Q. What force, if any, was maintained by you or at your office for the purpose of carrying on this business?

A. If we purchased the certificates, some time after we examined the records and also examined the property, and our usual custom was to notify the people in interest that we held a certificate of sale on the property and request that the same should be redeemed at the county clerk's office.

Q. Did you have any employees?

A. Yes, sir.

Q. How many?

A. Sometimes four (4) or five (5), according to the business of the office.

Q. Were they salaried employés?

A. Yes, sir.

97 Q. Did you do any other business than that which you did for Mr. Ogden?

A. Yes, sir.

Q. What proportion of time did the business which you did for Mr. Ogden occupy, with reference to the whole time employed by Carne and Drury and Carne & Coombs?

A. In 1877 and for the next four or five years we were very busy with Mr. Ogden's work. It took special clerical work to do his work.

Q. How was it in 1882?

A. About the same.

Q. Well, you have not quite answered the question. State as near as you can what the proportion of time was which was occupied with Mr. Ogden's business by your firm.

A. I think I would be stating the fact if I said it took about half of the time of the clerks and of the firm to attend to that business.

Q. What were your arrangements with Mr. Ogden for paying for your services?

A. When first we made investments for Mr. Ogden we were to receive a commission of five per cent. on the money invested.

Q. That was for your services?

A. Services in purchasing.

Q. Were you to be paid anything thereafter?

A. That was the fee we were entitled to when the investment was made. We were to do clerical work, notify the parties in interest, and were to receive a fee of two and one-half (2½) per cent. on the redemptions.

Q. Well, was any change made in that arrangement at any time?

A. Yes; I think in 1884. Finding the work so heavy on us, we declined to do any more for the same fee or commission, as it required too much time in services. The arrangement made thereafter was that we were to do all the work and to receive one-half of the penalties when collected.

98 Q. Now, did Mr. Ogden pay you the commission of five per cent. and two and one-half per cent., of which you have spoken, down to 1884?

A. Yes, sir; and he further paid us for making tax abstracts.

Q. What do you mean by making the tax abstracts?

A. Examination of the tax records from the year 1868 up to the date when they were filed.

Q. Why did you make tax abstracts for Mr. Ogden?

A. We made them for the purpose of seeing if we could find more information than we had already received, so that we could notify the parties in interest that we held liens on the property.

Q. Well, did you make tax abstracts in all cases of purchases for Mr. Ogden?

A. Not in all cases.

Q. Do you know whether you made tax abstracts in the case of the purchase of the property involved in this suit?

A. Yes, sir.

Q. What were you paid?

A. In the case in question Mr. Ogden paid us $10.00 for the abstracts.

Q. Was that a reasonable compensation for making the abstracts?

A. Very reasonable. He paid us also——

Q. Do you know what was the prevailing rate at Chicago in the years 1878 to 1882 in the market, not having reference to mortgage loans upon real estate but to commercial transactions?

A. Seven (7) per cent.

Q. For the investments made by Mr. Ogden, under the circumstances which you have stated, would the return of his principal and six (6) per cent. interest be a fair compensation?

A. No, sir.

Q. In the case in question here would Mr. Ogden be compensated for his outlays with respect to this property by the return of his principal and six (6) per cent. interest?

A. No, sir.

99 Q. Do you know the premises described in the pleadings in this case as lots thirteen (13) and fourteen (14), in block five (5) of Seamen's subdivision of block five (5), and the west one-half (½) of block four (4) and the west one hundred and forty (140) feet of block six (6), in the assessors' division of the northwest quarter (¼) of fractional section twenty-two (22), town. thirty-

nine (39), range fourteen (14) east of the third (3rd) P. M., in Cook county, Illinois?

A. I have seen the property; yes. I have seen it.

Q. How long have you known that property?

A. Ten (10) or twelve (12) years.

Q. Did you or the firm of Carne & Drury purchase that property for Mr. Ogden at tax sale?

A. Yes, sir.

Q. When?

A. September the 12th, 1877.

Q. What was paid at that time?

A. We paid $283.18.

Q. Was a deed afterwards taken out?

A. Yes.

Q. Do you remember when?

A. The deed was taken out on that sale March 26, 1880.

Q. Who prepared the notices, caused them to be served, prepared the affidavits, caused them to be filed, and procured the deed, of which you have spoken?

A. The only affidavits and necessary papers were prepared in the office of Carne & Drury, myself partly assisting.

Q. Who caused them to be prepared?

A. Carne & Drury.

Q. Was that work done for Mr. Ogden under the arrangements existing at that time, of which you have spoken?

A. Certainly.

Q. What else did you do with respect to that property than to purchase at that tax sale in 1877?

A. We paid the subsequent taxes that were delinquent for 1878 and 1879 and we paid the special assessment.

100 Q. Can you state what sums were so paid by you and what dates?

A. On August 17, 1878, we paid $6.98 in settlement of the South Park assessment, and on August 5, 1879, we paid $7.28 in settlement of the South Park assessment, and on the 27th of September of the same year we paid the general taxes and back forfeiture, amounting to $1,226.24, all of which was to protect the tax certificates of sale purchased September 12, 1877. On October 1, 1880, we purchased the property at the general tax sale for $986.53, and on July 20, 1881, we paid $259.48 for general taxes, and the following year, 1882, we paid the general taxes, $260.13, and the special assessment for $484.31, all of which was to protect the certificate of sale made on October 11, 1880.

Q. Why did you purchase on October 11, 1880?

A. The law changes as regards tax titles, and we thought it advisable to make another purchase.

Q. Did you ever have any conversation with Wm. H. Emerson concerning the redemption of this property?

A. Not to my knowledge until about 1½ years ago.

Q. Did Mr. Emerson ever tender you any sum of money for the redemption of this property?

A. Never.

Q. Did you ever have any conversation with Arthur D. Rich with respect to the redemption of this property?

A. I did.

Q. Who is Mr. Rich?

A. A gentleman of Chicago.

Q. A lawyer here?

A. Yes.

Q. Did you have more than one conversation with Mr. Rich?

A. I remember Mr. Rich coming into the office of Carne & Drury.

Q. About what time?

A. June, 1882; that conversation related to the liens we held on the lots referred to. He desired a statement of all we
101 had purchased and we agreed to furnish him with it. I made full statement for him, figuring interest to date, and sent him a copy on the 29th of June, 1882.

Q. Have you that statement?

A. I have a copy of it here, taken from our books this morning.

Q. Do you know whether Mr. Rich received it?

A. I cannot positively say he did. We sent it to him. One of the boys delivered it; I am not certain which.

Q. Did you, by that statement, indicate how much you would accept for the release of the claims of Mr. Ogden?

A. Yes, sir.

Q. Is that amount shown by this statement?

A. Yes, sir.

Q. How much is the amount?

A. $7,892.18.

Q. Are the items by which you reached that amount stated in this statement?

A. Yes, sir.

Q. In addition to the penalties and interest have you charged any sum in this statement for a deed?

A. Certainly.

Q. How much is that sum?

A. $3,000.00.

Q. I will ask you to produce that statement or a copy of it and attach it to your deposition as an exhibit for the purpose of showing what you claimed at that time.

A. I herewith attach the statement called for, marked Defendants' Exhibit A.

Q. Was the amount claimed at that time by you and mentioned in that statement, in your judgment, a reasonable sum to be claimed by Mr. Ogden for what he had invested and the costs and trouble which he had had with respect to this property?

A. I think it is a fair and reasonable sum.

Q. Have you paid any taxes since that time on this property?

A. Yes, sir.

Q. State what taxes, if any.

102 A. We paid on September 29th, 1883, the 1882 delinquent State, city, and county taxes, $373.21.

Q. Are you familiar with the values of real property in the vicinity of the property in question?

A. I have heard of the valuations.

Q. Do you know anything about the value of real estate in Chicago?

A. Some parts of Chicago I would know better than others.

Q. Have you dealt in real estate?

A. Yes, sir.

Q. What was the value of this property in question in the year 1877?

A. Probably $30,000.00 to $35,000.00.

Q. What was the value of that property in 1882?

A. $40,000.00 to $50,000.00.

Q. What is the value now?

A. It is considered about the same value.

Q. Has there been any building upon it?

A. No; no buildings that I know of. There are old buildings on it.

Q. Was there a building on it in 1877?

A. Yes, sir.

Q. Is there a building there now?

A. Yes, sir.

Q. Is it the same building?

A. I think so.

Q. Has that building been occupied for any part of the time since 1877?

A. Yes, sir.

Q. Has Mr. Ogden received any of the rents?

A. No, sir.

Q. Do you know James K. Pollard?

A. I do not.

Q. Did you personally make any effort to find James K. Pollard in the years 1877 to 1882?

A. Yes, sir.

Q. State what you did.

A. I instructed our man to serve J. K. Pollard with a notice of sale.

Q. State what you did.

A. I gave directions to the clerks.

Q. That is all?

A. They reported that they could not find him. I gave a special order for the purpose of hunting him for two (2) months.

103 We served the notice and we could not find him in 1879, and after the next sale, in 1882, we did find him and served on him a notice.

Q. Do you know anything about Mr. Pollard having been in business in Chicago at any time?

A. No.

JOHN CARNE, JR.

Examination-in-chief of HIRAM COOMBS:

Q. State name, residence, and occupation.

A. Name, Hiram Coombs; residence, Ridgeland, Cook county, Illinois; occupation, tax abstracts and real estate.

Q. Have you heard Mr. Carne's testimony this morning?

A. Yes, sir.

Q. Were you one of the firm of Carne & Drury at the time spoken of in that testimony?

A. I was a special partner in that firm.

Q. Do you know Isaac C. Ogden?

A. Yes, sir.

Q. State what you did for Isaac C. Ogden—what the firm of Carne & Drury did for Isaac C. Ogden from the years 1877 to 1882, inclusive, in a general way.

A. We invested for him annually in tax sales, paid the subsequent taxes on the purchases made, examined the title records of the property purchased for the purpose of ascertaining the owners' names so as to notify them that their property had been sold for taxes; also examined the tax records for the same purpose. At the proper time each year we prepared notices of tax sales, served them on the occupants of the premises purchased; also on the owners of and parties interested in the property. In case no redemption was made after these notices were served, we then prepared affidavits of such service, attached them to the certificates of tax sales
104 with the receipts for subsequent taxes paid and filed them with the county clerk for his evidence upon which to base his deed. After the deed was issued we filed the same for record and made quitclaims to Ogden or any one he desired us to make it to.

Before making investments annually at the tax sales we examined the maps with reference to the location of property to be purchased, and also the tax records, to see whether or not the parties had paid up and whether it was a good piece of property to purchase. I think that is about all.

Q. How were you paid by Mr. Ogden for these services?

A. We were paid five (5) per cent. commission on the amount of each sale, $3.00 certificate for the examination of the title records, $10.00 certificate for tax abstracts, and $18.00 for each certificate that ran to a tax deed.

Q. Now, do you know the property in question in this suit?

A. I do.

Q. Do you know Wm. H. Emerson?

A. Yes, sir.

Q. Do you know Arthur D. Rich?

A. Yes, sir.

Q. State whether what the firm of Carne and Drury did with reference to the property in question was done in accordance with and under the arrangement of which you have spoken, for Mr. Ogden.

A. First examined the map with reference to location to see

whether or not the property was desirable for purchase. That done, we instructed our purchaser at the tax sale to bid it in.

Q. That is in 1877?

A. 1877. After that the ordinary course of business would lead us to send notices to parties in interest, as I suppose was done in this case.

Q. Was it done?

A. I do not know for a fact: I suppose it would be notifying them that the property had been sold for taxes. If no redemption was made after that a circular or postal card was sent out. We
105 would then eighteen months after the dates of sale prepare the legal notices to be served as before stated. That would necessitate the examination of the assessor's records to ascertain the name of the assessee, if any; also the collector's warrants for the names of the parties paying the taxes. That done we should then proceed to serve the occupants of the premises in question and also the owners or the parties in interest either by personal service or by publication. If by publication we then had to prepare a notice for the printers. If no redemption was made after these notices had been served, we should then prepare affidavits of such service and file them with the clerk for tax deed.

Q. Who paid the cost of doing this?

A. Mr. Ogden.

Q. Do you know what you received from Mr. Ogden as pay for your services and disbursements in connection with the property in question?

A. Received five, 5, per cent. on the amount we purchased, $6.00 for title minutes, $20 for tax abstracts, $36.00 for serving notices. That is on the sale of 1877. On the sale of 1882 we have received no compensation so far except the 5% commission.

Q. Why is that?

Q. Most of the compensation is contained in the first charge for the title minutes of the same and for the tax abstracts; we were paid for them.

Q. Were these premises advertised under either of these sales?

A. Under both sales; yes, sir.

Q. Do you know what the costs of printers' fees were?

A. On the first sale they were all advertised under one notice.

Q. How much was paid on those?

—. There is no way of specifying. $1.00 per lot would be about the proper charge for advertising under that sale. On the sale of 1880, where the law requires the notice to be advertised separately, the average cost was about $5.00 per lot.

Q. Do you know what the prevailing rate of interest was
106 in Chicago in commercial transactions from 1878 to 1882?

A. Yes, sir; from eight (8) to ten (10) per cent.

Q. Are there any losses in a business like this conducted by Mr. Ogden?

A. Yes, sir; the losses are in the purchase of street ends, church property, and school property. We have no means of getting money back excepting through the county board. The work is

so great that it does not pay to try and get the money back, and it is charged up.

Q. From what source are the gains or profits derived, if there are any?

A. The profits derived in this tax business are from the penalties paid on property which is sold for taxes, the penalties being twenty-five (25) per cent. for each and every six (6) months up to the time of the expiration of redemptions, which is two (2) years from the date of sale. Then again the penalties and subsequent taxes pay ten (10) per cent. There is a margin of profit in that as well as in the penalties after the sales.

Q. Is property always redeemed?

A. No, sir.

Q. Does the purchaser of the tax deed usually get his money at the end of two (2) years?

A. No, sir; we have some tax titles that we have had for ten (10) years, and the margin of profit on these tax titles is reduced every year by our having to pay subsequent taxes thereon and the loss of time incurred in protecting the same at the annual tax sales—that is, we have to mark up on our advertised list of delinquent property before each annual tax sale, bid in the property on which we owned tax titles for the purpose of protecting the same at the sale—that is, for the purpose of paying the taxes on the same or special assessments, if any, at the sale, should the lands be offered by the county clerk; have to be prepared and know and
107 watch every piece that is offered to see whether we have any tax titles on it.

Q. In other words, after you have purchased at a tax sale, you are obliged to act as the owner of that property until it is redeemed, and not only examine for the purpose of seeing what taxes are due and unpaid, but to provide the means with which to pay them?

A. That is right. We have, in fact, to keep a ledger account of each piece of property purchased, and we do and must, from time to time, examine to see whether there have been changes in the title of the property, or, if vacant at the time the tax title was issued, to see whether any improvements have been put on after said tax title was issued.

Q. Mr. Coombs, what sum, in your judgment, would be a fair compensation to Mr. Ogden for the investments he has made in respect of this property and the costs and disbursements incurred by him on account of it?

A. Does that question include a profit or merely a return?

Q. It includes a fair compensation to him.

A. If we take these sales in connection with our other annual sales made we ought to have the legal redemption, the costs—all costs—paid out and eight (8) per cent. interest thereon.

Q. You mean by redemption the penalty?

A. I mean the penalty. The capital itself is worth eight (8) per cent., and, in addition to that, there is our time and also Mr. Ogden's time.

Q. Has he paid out—do you include what he has paid out?

A. No. I mean the time he has put in. The penalties would give Mr. Ogden a profit for his time and for the capital invested and the eight (8) per cent. interest would be the interest he ought to have for his capital.

Q. Would six (6) per cent interest, with the return of the
108 principal invested, be a fair compensation?

A. No; not by any means. Capital costs more than that.

HIRAM COOMS.

(See table marked p. 109.)

110 *Collector's Warrant.*

STATE OF ILLINOIS, }
Cook County, } *ss:*

The People of the State of Illinois to P. M. Cleary, collector of the town of South Chicago, in said county of Cook, Greeting:

You are hereby commanded to levy and collect from the several persons named in the roll or book hereto annexed and herewith committed to you (the same being the tax assessments upon the property in said town for the current year and for former years, as therein shown) the several sums of money entered in the column of "totals" of said roll or book opposite their respective names. You will proceed to collect the taxes and assessments mentioned in said book, and for that purpose you will call at least once upon each person taxed named in said book or at his, her, or their place of business (if he, she, or they reside in said town) and make demand of the taxes and assessments charged to him, her, or them upon his, her, or their property; and in case any person or persons, company, or corporation shall neglect or refuse to pay the tax and assessment imposed upon him, her, or them when demanded, you shall levy the same, together with the costs and charges that may accrue, by distress and sale of the personal property of the person, company, or corporation who ought to pay the same. In case any person, company, or corporation against whom the tax is assessed has removed from said town to another town or district in said county without paying said tax, you will levy and collect such tax of the goods and chattels of such person, company, or corporation in any town or district within said county to which said person, company, or corporation shall have removed, or from property of such person, company, or corporation wherever the same
111 may be found in said county. In levying on and selling personal property for taxes you will be governed by the same rules and be entitled to the same fees as constables now are or may be for like services on executions, but in no case will you charge mileage unless you are compelled to distrain property; and in case of such levy of goods and chattels by you, you will give public notice of the time and place of sale and of the property to be sold at least five days previous to the day of sale, by advertisement in writing, to be posted up in at least three public places in said town,

and at such time and place you will, if the same shall not be redeemed by payment of the taxes and assessments, sell the same at public auction, and, if practicable, no more property shall be sold than sufficient to pay the taxes, costs, and charges due.

If the property thus distrained shall be sold for more than the amount of taxes and assessments and charges due, you will return the surplus to the person, company, or corporation in whose possession such property was when the distress was made, if no claim shall be made to such surplus by any other person, company, or corporation. If any other person, company, or corporation shall claim such surplus, on the ground that such property belonged to him, her, or them, and such claim be admitted by the person, company, or corporation for whose tax or assessments the same was distrained, you will pay such surplus to such owner or owners.

Out of the moneys collected by you by virtue hereof, after deducting the compensation to which you are legally entitled, you will pay over as follows, to wit: To the proper officer or officers the amount of tax collected for the support of highways and bridges, and to the supervisor of the town the moneys which shall
112 have been collected therein to defray town expenses; to the proper school officer or officers the district school tax, and to the county collector the State and county tax collected by you, and to the city or incorporated town or village treasurer or other proper officer or officers the taxes or special assessments collected by you for such city, incorporated town, village, or other authority as often and at such times as may be demanded by the proper officer, all of which payments herein specified you are required to make on or before the tenth day of March next.

Hereof fail not to make returns of your doings by virtue hereof, under the penalties of the law in such case made and provided.

In testimony whereof Herman Lieb, county clerk of said county, has hereunto set his hand and affixed the seal of the county court of said county this 16th day of December, A. D. 187–.

[SEAL.] HERMAN LIEB,
County Clerk.

SAML ASHTON,
Chairman of the Board of Cook County Commissioners.

113 STATE OF ILLINOIS, }
County of Cook, } ss.:

I, Henry Wulff, clerk of the county court of Cook county, in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true and correct copy of the collector's book and the warrant attached thereto for the taxes of A. D. 1873 and prior years, in so far as the same relates to the premises described in the foregoing copy, all of which appears from the records and files of my office.

In witness whereof I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chi-
[SEAL.] cago, in said county, this 20th day of June, A. D. 1887.

HENRY WULFF,
Clerk of the County Court.

STATE OF ILLINOIS, }
County of Cook, } ss:

I, Richard Prendergast, county judge of Cook county and sole presiding judge of the county court of Cook county, in the State of Illinois, do hereby certify that Henry Wulff, Esq., whose name is subscribed to the foregoing certificate of attestation, now is and was at the time of signing and sealing the same the clerk of the county court of Cook county aforesaid and keeper of the records and seal thereof, duly elected and qualified to office, and that full faith and credit are and of right ought to be given to all his official acts as such in all courts of record and elsewhere, and that his said attestation is in due form of law and by the proper officer.

Given under my hand and seal, at my chambers, in Chicago, this 13th day of July, A. D. 1887.

[SEAL.] RICHARD PRENDERGAST. [SEAL.]
County Judge.

(See table marked pp. 114 & 115.)

116 *Collector's Warrant.*

STATE OF ILLINOIS, }
County of Cook, } ss:

The People of the State of Illinois to Michael Evans, collector of the town of South Chicago, in said county of Cook and State of Illinois, Greeting:

You are hereby commanded to levy and collect from the several persons named in the roll or book hereto annexed and herewith committed to you (the same being the tax assessment upon the property in said town for the current year and for former years, as therein shown) the several sums of money entered in the column of "totals" of said roll or book opposite their respective names. You will proceed to collect the taxes and assessments mentioned in said book, and for that purpose you will call at least once upon each person taxed named in said book or at his place of business (if he resides in said town) and make demand for the taxes and assessment charged to him upon his property; and in case any person named in this book shall neglect or refuse to pay his personal-property tax imposed upon him when demanded you shall levy the same, together with the costs and charges that may accrue by distress and sale of the goods and chattels of such person. In case any person against whom the tax is assessed has removed from said town to another town in said county without paying said tax, you will levy and collect such tax of the goods and chattels of such person in any town within said county to which said person shall have removed, or from property of such person wherever the same may be found in said county. In levying on and selling personal property for taxes you will be governed by the same rules and be entitled to

the same fees as constables are or may be for like services on
117 executions, but in no case will you charge mileage unless you are compelled to distrain property; and in case of such levy of goods and chattels by you, you will give public notice of the time and place of sale and of the property to be sold, with the name of the delinquent, at least five days previous to the day of sale, by advertisements in writing, to be posted up in at least three public places in said town where such sale is to be made, and at such time and place you will, if the same shall not be redeemed by payment of the taxes, sell the same at public auction, and, if practicable, no more property shall be sold than sufficient to pay the taxes, costs, and charges due.

If the property thus distrained shall be sold for more than the amount of taxes and charges due, you will return the surplus to the person in whose possession such property was when distress was made, if no claim shall be made to such surplus by any other person.

If any other person shall claim such surplus on the ground that the property sold belonged to him, and such claim be admitted by the person for whose tax the same was distrained, you will pay such surplus to such owner.

Out of the moneys collected by you by virtue hereof, after deducting the compensation to which you are legally entitled, you will pay over as follows, to wit: To the proper officers the amount of tax collected for the support of highways and bridges, and to the supervisor of the town the moneys which shall have been collected therein to defray town expenses; to the proper school officers the district school tax, and to the county collector the county tax and the taxes payable to the State treasury collected by you at the time and in the manner directed by law, and to the city or incorporated town or village treasurer or other proper officer the taxes or special
118 — payable to the State treasury collected by you at the time and in the manner directed by law, and to the city or incorporated town or village treasurer or other proper officer the taxes or special assessments collected by you for such city, incorporated town or village, or others, as often and at such times as may be demanded by the proper officer; all of which payments herein specified you are required to make on or before the tenth day of March next.

Hereof fail not to make returns of your doings by virtue hereof, under the penalties of the law in such case made and provided.

In testimony whereof Hermann Lieb, county clerk of said county, has hereunto set his hand and affixed the seal of the county court this 30th day of December, A. D. 1874.

[SEAL.] HERMANN LIEB,
County Clerk.

119 STATE OF ILLINOIS, }
County of Cook, } ss:

I, Henry Wulff, clerk of the county court of Cook county, in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true and correct copy of the collector's

book and the warrant attached thereto for the taxes of A. D. 1874 and prior years in so far as the same relates to the premises described in the foregoing copy, all of which appears from the records and files of my office.

In witness whereof I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, [SEAL.] in said county, this 20th day of June, A. D. 1887.

HENRY WULFF,
Clerk of the County Court.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Richard Prendergast, county judge of Cook county and sole presiding judge of the county court of Cook county, in the State of Illinois, do hereby certify that Henry Wulff, Esq., whose name is subscribed to the foregoing certificate of attestation, now is and was at the time of signing and sealing the same the clerk of the county court of Cook county aforesaid and keeper of the records and seal thereof, duly elected and qualified to office, and that full faith and credit are and of right ought to be given to all his official acts as such in all courts of record and elsewhere, and that his said attestation is in due form of law and by the proper officer.

Given under my hand and seal, at my chambers, in Chicago, this 13th day of July, A. D. 1887.

[SEAL.] RICHARD PRENDERGAST, [SEAL.]
County Judge.

(See table marked pp. 120 & 121.)

122 *Collector's Warrant.*

STATE OF ILLINOIS, } ss:
County of Cook, }

The People of the State of Illinois to Michael Evans, collector of the town of South Chicago, in said county of Cook and State of Illinois, Greeting:

You are hereby commanded to levy and collect from the several persons named in the roll or book hereto annexed and herewith committed to you (the same being the tax assessment upon the property in said town for the current year and for former years, as therein shown) the several sums of money entered in the column of "totals" of said roll or book opposite their respective names. You will proceed to collect the taxes and assessments mentioned in said book, and for that purpose you will call at least once upon each person taxed named in said book or at his place of business (if he resides in said town) and make demand for the taxes and assessments charged to him upon his property.

And in case any person named in this book shall neglect or refuse to pay his personal-property tax imposed upon him when demanded you shall levy the same, together with the costs and charges that

may accrue by distress and sale of the goods and chattels of such person. In case any person against whom the tax is assessed has removed from said town to another town in said county without paying said tax, you will levy and collect such tax of the goods and chattels of such person in any town within said county to which said person shall have removed, or from property of such person wherever the same may be found in said county.

123 In levying on and selling personal property for taxes you will be governed by the same rules and be entitled to the same fees as constables are or may be for like services on executions, but in no case will you charge mileage unless you are compelled to distrain property; and in case of such levy of goods and chattels by you, you will give public notice of the time and place of sale and of the property to be sold, with the name of the delinquent, at least five days previous to the day *pro* sale, by advertisements in writing, to be posted up in at least three public places in said town where such sale is to be made, and at such time and place you will, if the same shall not be redeemed by payment of the taxes, sell the same at public auction, and, if practicable, no more property shall be sold than sufficient to pay the taxes, costs, and charges due.

If the property thus distrained shall be sold for more than the amount of taxes and charges due, you will return the surplus to the person in whose possession such property was when the distress was made, if no claim shall be made to such surplus by any other person.

If any other person shall claim such surplus on the ground that the property sold belonged to him, and such claim be admitted by the person for whose tax the same was distrained, you will pay such surplus to such owner. Out of the moneys collected by you by virtue hereof, after deducting the compensation to which you are legally entitled, you will pay over as follows, to wit:

To the proper officers the amount of tax collected for the support of highways and bridges, and to the supervisor of the town the monies which shall have been collected therein to defray town expenses; to the proper school officers the district school tax,

124 and to the county collector the county tax and the taxes payable to the State treasurer collected by you and in the manner directed by law, and to the city or incorporated town or village treasurer or other proper officer the taxes or special assessment collected by you for such city, incorporated town or village, or others, as often and at such times as may be demanded by the proper officers; all of which payments herein specified you are required to make on or before the tenth day of March next.

Hereof fail not to make returns of your doings by virtue hereof, under penalties of the law in such case made and provided.

In testimony whereof Hermann Lieb, county clerk of said county, has hereunto set his hand and affixed the seal of the county court of said county this 14th day of December, A. D. 1875.

[SEAL.] HERMANN LIEB,
County Clerk.

STATE OF ILLINOIS, }
County of Cook, } ss:

I, Henry Wulff, clerk of the county court of Cook county, in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true and correct copy of the collector's book and the warrant attached thereto for the taxes of A. D. 1875 and prior years, in so far as the same relates to the premises described in the foregoing copy, all of which appears from the records and files of my office.

In witness whereof I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 18th day of June, A. D. 1887.

[SEAL.] HENRY WULFF,
Clerk of the County Court.

STATE OF ILLINOIS, }
County of Cook, } ss:

I, Richard Prendergast, county judge of Cook county and
125 sole presiding judge of the county court of Cook county, in the State of Illinois, do hereby certify that Henry Wulff, Esq., whose name is subscribed to the foregoing certificate of attestation, now is and was at the time of signing and sealing the same the clerk of the county court of Cook county aforesaid and keeper of the records and seal thereof, duly elected and qualified to office, and that full faith and credit are and of right ought to be given to all his official acts as such in all courts of record and elsewhere, and that his said attestation is in due form of law and by the proper officer.

Given under my hand and seal, at my chambers, in Chicago, this 13th day of July, A. D. 1887.

[SEAL.] RICHARD PRENDERGAST. [SEAL.]
County Judge.

126 COMPL'T'S EX. "F." J. I. B., Master.

STATE OF ILLINOIS, }
Cook County, } ss:

Pleas before the Honorable Martin R. M. Wallace, sole presiding judge of the county court of Cook county, in the State of Illinois, at a term of said court begun and held at the court-house, in Chicago, in said county, on the second Monday (being the eleventh day) of June, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States of America the one hundred and first.

Present thereat: Honorable Martin R. M. Wallace, judge of the county court of Cook county; Charles Kern, sheriff of Cook county.

Attest: HERMAN LIEB,
Clerk of the County Court of Cook County.

Court opened by proclamation.

In the Matter of the Application of Louis C. Huck, county treasurer and *ex officio* collector of the revenue of Cook county, in the State of Illinois, for judgment for the delinquent State, county, town, school, road, city, village, park, and corporation taxes and assessments levied and assessed upon the lands and lots in the county of Cook, in the State of Illinois, for the year 1876, and for the back taxes and forfeitures to the State, together with interest, printers' fees, and costs due and unpaid thereon.

127 And now, on this day, comes into court here Louis C. Huck, county treasurer and *ex officio* collector of the revenue of Cook county, in the State of Illinois, by Luther Laflin Mills, State's attorney, on behalf of the people of the State of Illinois, and by John M. Rountree, Esquire, county attorney of Cook county, and Messrs. Bonfield and Adams, attorneys for the city of Chicago, and applies to the court for judgment for the delinquent State, county, town, school, road, city, village, park, and corporation taxes and assessments levied and assessed upon the lands and lots in the county of Cook, in the State of Illinois, for the year 1876, and for judgment for the amounts for which lands and lots were forfeited to the State of Illinois for unpaid taxes at the tax sale for taxes of 1875, together with interest at ten per cent. and costs thereon, and for judgment for back taxes due and unpaid thereon, the record of the delinquent list of all said delinquent taxes, assessments, forfeitures, back taxes, interest, and printers' fees and costs being contained in thirty-six volumes, numbered from one (1) to thirty-six (36), and hereinafter following:

And it appearing to the court and the court finding from evidence presented that due notice, as required by law, has been given of the application for judgment, it is ordered by the court that any and all persons desiring to object to the rendition of such judgment file their objections thereto in writing by the coming in of this court at 10 o'clock a. m. on Monday, the eighteenth day of June instant.

M. R. M. WALLACE, *Co. Judge.*

128 Record of a list of delinquent lands and lots in the coun-y of Cook and State of Illinois upon which remain due and unpaid the taxes and special assessments levied and assessed for the year 1876 and prior years and upon which remain due and unpaid the amounts for which said lands and lots had been previously forfeited to the State and which remained unpaid on the first day of November, A. D. 1876, and ten per cent. interest, printers' fees, and other costs added to said amounts, and upon which remain due and unpaid back taxes of 1875 and prior years added (embracing only the delinquent taxes and special assessments, together with the interest, printers' fees, and other costs thereon, if any, contained and set forth in the collector's books, with the warrants attached thereto issued by the county clerk of said county for the year 1876, which now remain due and unpaid), and showing the names of the owners

thereof, so far as known, the proper description of the lands and lots, the valuation on which the taxes are extended, the amount of each kind of tax and assessment, and interest and cost, if any, against each parcel of land or lot, and the total amount charged against each parcel of land or lot respectively; all of which taxes and special assessments so levied and assessed for said years and hereinafter set forth and enumerated and the interest and cost thereon Louis C. Huck, county treasurer and *ex officio* county collector of the taxes of Cook county, State of Illinois, has been unable to collect, and which said list is this day reported to the county clerk.

(See table marked pp. 129 & 130.)

131 STATE OF ILLINOIS, } *ss:*
County of Cook, }

I, Louis C. Huck, collector of the county of Cook, do solemnly swear that the foregoing is a true and correct record of the delinquent lands and lots within the county of Cook upon which I have been unable to collect the taxes and special assessments, interest, and printers' fees, and other costs charged thereon, as required by law for the year or years therein set forth; that said taxes now remain due and unpaid, as I verily believe.

LOUIS C. HUCK,
Collector of Cook County, Illinois.

Subscribed and sworn to before me this 11 day of June, A. D. 1877.

HERMANN LIEB,
[SEAL.] *County Clerk.*

County Court of Cook County, July Term, A. D. 1877.

THURSDAY, *July 12th*, A. D. 1877.

Court being in session—present, same as on the 9th instant.

In the Matter of the Application of LOUIS C. HUCK, county treasurer and *ex officio* collector of the revenue of Cook county, in the State of Illinois, for judgment for the delinquent State, county, town, school, road, city, village, park, and corporation taxes and assessments levied and assessed upon the lands and lots in the county of Cook, in the State of Illinois, for the year 1876, and for the back taxes and forfeitures to the State, together with interest, printers' fees, and costs due and unpaid thereon.

132 And now, to wit, on this twelfth day of July, A. D. 1877, the same being one of the days of the July term, A. D. 1877, of this court, again comes Louis C. Huck, county treasurer and *ex officio* collector of the revenue of Cook county, by John M. Rountree and Francis Adams, his attorneys; also come the several parties, owners of and interested in the several lands and lots in the foregoing list described, who have heretofore severally filed objections herein to the rendition of judgment against the said lands and lots

in which they are interested respectively; and the court having considered the several objections aforesaid, and having heard the evidence adduced and the arguments of counsel, and having duly considered the same, and being now fully advised in the premises, it is considered and ordered by the court that all objections to the rendition of judgment against the several lands and lots in the foregoing list described, opposite the description of which lands and lots in said list the words "judgment refused" appear, there being nothing written after said words to limit or confine the same to any particular tax or assessment or forfeiture or costs, be, and the same are hereby, sustained, and judgment is hereby refused as to said several lands and lots; and it is further considered and ordered by the court that wherever in said list there is marked or noted opposite the description of any land or lot "judgment refused" for any particular tax or assessment or forfeiture or costs or any portion thereof, judgment is hereby refused against said land or lot for said particular tax or assessment or forfeiture or costs or such portion thereof as to which judgment is noted refused as aforesaid; and it is further ordered that all other objections filed herein to the rendition of judgment against the lands and lots in the foregoing list described be, and the same are hereby, overruled.

133 And whereas due notice has been given of the intended application for judgment against said lands and lots, and no sufficient defense having been made or cause shown why judgment should not be entered against said lands and lots for the taxes, assessments, forfeitures, back taxes, interest, and costs due and unpaid thereon for the years herein set forth, except where judgment has been refused as aforesaid: Therefore, it is considered and ordered by the court that judgment be, and is hereby, entered against the aforesaid tracts or lots of land or parts of tracts or lots (as the case may be) for the sum annexed to the description of each, less any particular tax or assessment or forfeiture or back taxes or interest or costs for which judgment has been refused as aforesaid, being the amount of taxes, assessments, forfeitures, back taxes, interest, and costs due and unpaid severally thereon.

And it is ordered by the court that the said several tracts or lots of land, or so much of each of them as shall be necessary to satisfy the amount of taxes, assessments, forfeitures, back taxes, interest, and costs due and unpaid severally thereon, be sold as the law directs.

M. R. M. WALLACE, *Co. Judge.*

STATE OF ILLINOIS, }
County of Cook. } ss:

I, Henry Wulff, clerk of the county court of Cook county, in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true and correct copy of the judgment record for the taxes for the year A. D. 1876 in so far as the same relates to the premises described therein, all of which appears from the records and files of my office.

134 In witness whereof I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 17th day of June, A. D. [SEAL.] 1887.

HENRY WULFF,
Clerk of the County Court.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

I, Richard Prendergast, county judge of Cook county and sole presiding judge of the county court of Cook county, in the State of Illinois, do hereby certify that Henry Wulff, Esq., whose name is subscribed to the foregoing certificate of attestation, now is and was at the time of signing and sealing the same the clerk of the county court of Cook county aforesaid and keeper of the records and seal thereof, duly elected and qualified to office, and that full faith and credit are and of right ought to be given to all his official acts as such in all courts of record and elsewhere, and that his said attestation is in due form of law and by the proper officer.

Given under my hand and seal, at my chambers, in Chicago, this 13th day of July, A. D. 1887.

[SEAL.] RICHARD PRENDERGAST. [SEAL.]
County Judge.

135 COMPL'T'S EX. "G." J. I. B., Master.

UNITED STATES OF AMERICA, }
State of Illinois, County of Cook, } *ss:*

Pleas before the Honorable Mason B. Loomis, sole presiding judge of the county court of Cook county, in the State of Illinois, at a regular term, of said county court of Cook county begun and holden at the court-house, in the city of Chicago, in said county and State, on the second Monday, being the ninth day, of August, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States of America the one hundred and fifth.

Court opened by proclamation.

Present thereat: The Honorable Mason B. Loomis, judge of the county court of Cook county; Luther Laflin Mills, State's attorney; John Hoffman, sheriff of Cook county.

Attest: ERNST F. C. KLOKKE.
Clerk of the County Court of Cook County.

In the Matter of the Application of WILLIAM T. JOHNSON, county treasurer and *ex officio* collector of the revenue of Cook county, in the State of Illinois, for judgment for the delinquent State, county, town, school, road, city, village, park, and corporation taxes and assessments levied and assessed upon the lands and lots in the county of Cook, in the State of Illinois, for the year A. D. 1879, for the back taxes and forfeitures to the State, together with interest, printers' fees, and costs due and unpaid thereon.

136 And now comes into court here William T. Johnson, county treasurer and *ex officio* collector of the revenue of Cook county, in the State of Illinois, by Luther Laflin Mills, State's attorney, on behalf of the people of the State of Illinois, and by Considor H. Willet, county attorney of Cook county, and by Francis Adams, attorney for the city of Chicago, and applied to the court for judgment for the delinquent State, county, town, school, road, city, village, park, and corporation taxes and assessments levied and assessed upon the lands and lots in the county of Cook and State of Illinois for the year 1879, and for judgment for the amounts for which lands and lots were forfeited to the State of Illinois for unpaid taxes at a tax sale for taxes of 1878, together with such interest as may be due and costs thereon, and for judgment for back taxes due and unpaid thereon—

The record of the delinquent list of all said delinquent taxes, assessments, forfeitures, back taxes, interest, printers' fees, and costs being contained in twenty-three volumes, numbered one to twenty-three, inclusive, and hereinafter following: and it appearing to the court and the court finding from evidence presented that due notice, as required by law, has been given of this application for judgment, it is ordered by the court that any and all person desiring to object to the rendition of such judgment file herein their objections thereto, in writing, by the coming in of this court at ten o'clock a. m. on Wednesday, the eleventh day of August, instant.

The following is a record of a list of delinquent lands and lots in the county of Cook and State of Illinois upon which remain due and unpaid the taxes and special assessments levied and assessed for the year A. D. 1879 and upon which remain due and unpaid
137 the amounts for which said lands and lots had been previously forfeited to the State of Illinois, and which remained unpaid on the first day of November, A. D. 1879, and interest and printers' fees added to said amounts, as required by law, and upon which, also, remain due and unpaid back taxes of 1879 and prior years added (embracing only the delinquent taxes and special assessments, together with the interest and printers' fees thereon, if any, contained and set forth in the collector's books, with the warrants attached thereto, issued by the county clerk of said county, for the year A. D. 1879, which now remain due and unpaid), and showing the names of the owners thereof, so far as known, the proper description of the lands and lots, the valuation on which the taxes are extended, the amount of each kind of tax and assessment, and interest, printers' fees, and other costs, if any, against each parcel of land or

lot respectively; and all such due and unpaid taxes bear interest after the first day of May, A. D. 1880, at the rate of one per cent. per month until paid or forfeited; parts or fractions of a month are reckoned as a month; all of which taxes and special assessments so levied and assessed for said years and hereinafter set forth and enumerated, and interest, printers' fees, and other costs due thereon, respectively—

William T. Johnson, county treasurer and *ex officio* collector of the taxes of Cook county, State of Illinois, has been unable to collect, and which said list — reported to the county clerk of said county and duly filed on the 26th day of July, A. D. 1880.

(See table marked pp. 138 & 139.)

140 STATE OF ILLINOIS, } ss:
Cook County, }

I, William T. Johnson, collector of Cook county, do solemnly swear that the foregoing is a true and correct record of a list of the delinquent lands and lots within the county of Cook upon which I have been unable to collect the taxes and special assessments, interest, and printers' fees charged thereon, as required by law, for the year or years therein set forth; that said taxes now remain due and unpaid, as I verily believe.

WILLIAM T. JOHNSON,
Collector of Cook County, Illinois.

Subscribed and sworn to before me this ninth day of August, 1880.

E. F. C. KLOKKE,
County Clerk.

UNITED STATES OF AMERICA, } ss:
State of Illinois, County of Cook, }

Pleas before the Honorable Mason B. Loomis, sole presiding judge of the county court of Cook county, in the State of Illinois, at a term of said court begun and holden at the court-house, in the city of Chicago, in said county, on the second Monday, being the ninth day, of August, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States of America the one hundred and fifth.

Present: The Honorable Mason D. Loomis, judge of the county court of Cook county; Luther Laflin Mills, State's attorney;
141 John Hoffman, sheriff of Cook county.

Attest: ERNST F. C. KLOKKE, *Clerk.*

Court opened by proclamation.

In the Matter of the Application of WILLIAM T. JOHNSON, county treasurer and *ex officio* collector of the revenue of Cook county, in the State of Illinois, for judgment for the delinquent State, county, town, school, road, city, village, park, and corporation taxes and assessments levied and assessed upon the lands, lots, and portions of the same in the said county of Cook and State of Illinois for the year one thousand eight hundred and seventy-nine, and for back taxes and forfeitures to the State of Illinois, together with printers' fees, interest, and costs due and unpaid thereon, with interest upon all due and unpaid taxes for the year A. D. 1879 embraced in this judgment, commencing on the first day of May, A. D. 1880, at the rate of one per cent. per month until paid or forfeited to the State of Illinois; parts or fractions of a month shall be reckoned as a month.

And now, on this twenty-sixth day of August, A. D. 1880, the same being one of the days of the August term, A. D. 1880, of this court, again comes the said William T. Johnson, county treasurer and collector as aforesaid, by Luther Laflin Mills, State's attorney; Consider H. Willet, attorney for Cook county, and Francis Adams, corporation counsel for the city of Chicago; also come the several parties claiming to be owners of and interested in the several lands and lots in the foregoing list described, who have heretofore severally filed objections herein to the rendition of judgment against said lands and lots respectively; and the court having heard
142 the proofs submitted and the evidence adduced and the arguments of counsel, and being more fully advised in the premises, therefore it is considered and ordered by the court that all objections to the rendition of judgment against the several lands and lots in the foregoing list described, opposite the description of which in said list the words "objections sustained" or "judgment refused" are written, there being nothing written after said words to limit or confine the same to any particular tax, assessments, forfeiture, or costs, be, and the same are hereby, sustained, and judgment is hereby refused as to said lands and lots.

It is further ordered by the court that wherever in said list there is noted opposite the description of any land or lot the words "judgment refused" or "objections sustained" as to any particular tax or assessment or forfeiture or costs, judgment is hereby refused against said lands or lots for said tax or part thereof, assessment, or forfeiture or costs as to which judgment is noted refused as aforesaid.

And it is further ordered by the court that all other objections filed herein to the rendition of judgment against the lands or lots in the foregoing list described be, and the same are hereby, overruled.

And it is further ordered by the court that wherever in said list there is written opposite the description of any lands or lots the words "judgment by agreement" or "judgment by consent," and there is written after said words in said record a certain sum, judgment is hereby rendered by consent for said sum only and costs.

And whereas due notice has been given of the intended application for judgment against said lands and lots, and no sufficient defense having been made or cause shown why judgment should not be entered against said lands and lots for taxes, assessments, interest, penalties, and costs due and unpaid thereon for the years
143 herein set forth, except where judgment has been refused as aforesaid:

Therefore it is considered and ordered by the court that judgment be, and is hereby, ordered against the aforesaid lands, lots, and pieces of land in favor of the people of the State of Illinois for the sum annexed to each, being the amount of taxes, assessments, interest, penalties, and costs due severally thereon, together with interest, at the rate of one per cent. per month, upon all due and unpaid taxes for the year A. D. 1879, embraced in this judgment, said interest to be reckoned from May 1st, A. D. 1880, until said taxes for the year A. D. 1879 are paid or forfeited; parts or fractions of a month shall be reckoned as a month.

And it is ordered by the court that the said several tracts, lots, pieces, and parcels of land, or so much of them as shall be sufficient to satisfy the amount of taxes, assessments, interest, penalties, and costs as above set forth, be sold as the law directs.

And it is further ordered by the court that all parties praying an appeal from this judgment file their appeal bonds in the penal sum of two hundred and fifty dollars, and deposite with the county treasurer of Cook county an amount of money equal to the amount of the judgment and costs and file herein their bills of exceptions, such deposite to be made and appeal bonds and bills of exceptions filed within twenty days from this date.

It is further ordered that in appeals by the people of the State of Illinois it shall not be necessary to file any appeal bond.

MASON B. LOOMIS,
Judge of the County Court of Cook County, Illinois.

144 STATE OF ILLINOIS, }
County of Cook, } *ss:*

I, Henry Wulff, clerk of the county court of Cook county, in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true and correct copy of the judgment record for the taxes of the year A. D. 1879 and prior years in so far as the same relates to the premises described in the foregoing copy, all of which appears from the records and files of my office.

In witness whereof I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 17th day of June, A. D. 1887.

HENRY WULFF,
Clerk of the County Court.

[SEAL.]

STATE OF ILLINOIS, }
County of Cook, } *ss:*

I, Richard Prendergast, county judge of Cook county and sole presiding judge of the county court of Cook county, in the State of

Illinois, do hereby certify that Henry Wulff, Esq., whose name is subscribed to the foregoing certificate of attestation, now is and was at the time of signing and sealing the same the clerk of the county court of Cook county aforesaid and keeper of the records and seal thereof, duly elected and qualified to office, and that full faith and credit are and of right ought to be given to all his official acts as such in all courts of record and elsewhere, and that his said attestation is in due form of law and by the proper officer.

Given under my hand and seal, at my chambers, in Chicago, this 13th day of July, A. D. 1887.

145 [SEAL.] RICHARD PRENDERGAST, [SEAL.]
County Judge.

(See table marked pp. 146 & 147.)

148 UNITED STATES OF AMERICA, }
State of Illinois, County of Cook, } *ss:*

Pleas before the Honorable Mason B. Loomis, sole presiding judge of the county court of Cook county, in the State of Illinois, at a term of said court begun and holden at the court-house, in the city of Chicago, in said county, on the second Monday, being the ninth day, of August, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States of America the one hundred and fifth.

Present: The Honorable Mason B. Loomis, judge of the county court of Cook county; Luther Laflin Mills, State's attorney; John Hoffman, sheriff of Cook county.

Attest: ERNST F. C. KLOKKE, *Clerk.*

Court opened by proclamation.

In the Matter of the Application of WILLIAM T. JOHNSON, county treasurer and *ex officio* collector of the revenue of Cook county, in the State of Illinois, for judgment for the delinquent State, county, town, school, road, city, village, park, and corporation taxes and assessments levied and assessed upon the lands and lots and portions of the same in the said county of Cook and State of Illinois for the year one thousand eight hundred and seventy-nine, and for back taxes and for forfeitures to the State of Illinois, together with printers' fees, interest, and costs due and unpaid thereon, with interest upon all due and unpaid taxes for the year A. D. 1879 embraced in this judgment, commencing on the first day of May, A. D. 1880, at the rate of one per cent. per month until
149 paid or forfeited to the State of Illinois; parts or fractions of a month shall be reckoned as a month.

And now, on this twenty-sixth day of August, A. D. 1880, the same being one of the days of the August term, A. D. 1880, of this court, again comes the said William T. Johnson, county treasurer and collector as aforesaid, by Luther Laflin Mills, State's attorney; Consider

H. Willet, attorney for Cook county, and Francis Adams, corporation counsel for the city of Chicago; also come the several parties claiming to be owners of *said* interested in the several lands and lots in the foregoing list described, who have heretofore severally filed objections herein to the rendition of judgment against said lands and lots respectively; and the court having heard the proofs submitted and the evidence adduced and the arguments of counsel, and being now fully advised in the premises, therefore it is considered and ordered by the court that all objections to the rendition of judgment against the several lands and lots in the foregoing list described, opposite the description of which in said list the words "judgment sustained" or "judgment refused" are written, there being nothing written after said words to limit or confine the same to any particular tax, assessment, forfeiture, or costs, be, and the same are hereby, sustained, and judgment is hereby refused as to said land and lots.

It is further ordered by the court that wherever in said list there is noted opposite the description of any land or lot the words "judgment refused" or "objections sustained" as to any particular tax or assessment or forfeiture or costs, judgment is hereby refused against said lands or lots for said tax or part thereof, assessment, or forfeiture or costs as to which judgment is noted refused as aforesaid.

And it is further ordered by the court that all other objections filed herein to the rendition of judgment against the lands
150 or lots in the foregoing list described be, and the same are hereby, overruled.

And it is further ordered by the court that whereas in said list there is written opposite the description of any lands or lots the words "judgment by agreement" or "judgment by consent," and there is written after said words in said record a certain sum, judgment is hereby rendered by consent for said sum only and costs; and whereas due notice has been given of the intended application for judgment against said lands and lots and no sufficient defence having been made or cause shown why judgment should not be entered against said lands and lots for taxes, assessments, interest, penalties, and costs due and unpaid thereon for the years herein set forth, except when judgment has been refused as aforesaid:

Therefore it is considered and ordered by the court that judgment be, and is hereby, rendered against the aforesaid lands, lots, and pieces of land in favor of the people of the State of Illinois for the sum annexed to each, being the amount of taxes, assessments, interest, penalties, and costs due severally thereon, together with interest, at the rate of one per cent. per month, upon all due and unpaid taxes for the year A. D. 1879 embraced in this judgment, said interest to be reckoned from May 1st, A. D. 1880, until said taxes for the year A. D. 1879 are paid or forfeited; parts or fractions of a month shall be reckoned as a month.

And it is ordered by the court that the said several tracts, lots, pieces, and parcels of land, *or* so much of them as shall be sufficient to satisfy the amount of taxes, assessments, interest, penalties, and

costs as above set forth, be sold as the law directs; and it is further ordered by the court that all parties praying an appeal from
151 this judgment file their appeal bonds in the penal sum of two hundred and fifty dollars and deposit with the county treasurer of Cook county an amount of money equal to the amount of the judgment and costs and file herein their bills of exceptions, such deposit to be made and appeal bonds and bills of exceptions filed within twenty days from this date.

It is further ordered that in appeals by the people of the State of Illinois it shall not be necessary to file any appeal bonds.

MASON B. LOOMIS,
Judge of the County Court of Cook County, Illinois.

STATE OF ILLINOIS, }
County of Cook, } ss:

I, E. F. C. Klokke, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the foregoing, being twenty-one volumes, numbered one (1) to twenty-one (21) respectively, contain a correct record of the tracts, parcels of land, and town lots in the county of Cook and State of Illinois against which judgment was entered for delinquent taxes and special assessments of the year 1879, and back taxes and forfeitures to the State for the year 1878 and prior years, together with interest and costs due and unpaid thereon, by the county court on the twenty-sixth (26th) day of August, A. D. 1880, and of the orders of judgment and sale made and entered by said court on the date aforesaid.

In testimony whereof I have hereunto set my hand and affixed the seal of the county court of Cook county, at Chicago, in said county, this thirteenth (13th) day of September, A. D. 1880.

[SEAL.] E. F. C. KLOKKE,
Clerk of the County Court of Cook County.

152 STATE OF ILLINOIS, }
County of Cook, } ss:

I, Henry Wulff, clerk of the county court of Cook county, in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true and correct copy of the sale and redemption record for the taxes of A. D. 1879 and prior years in so far as the same relates to the premises described in the foregoing copy, all of which appears from the records and files of my office.

In witness whereof I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 18th day of June, A. D. 1887.

[SEAL.] HENRY WULFF,
Clerk of the County Court.

STATE OF ILLINOIS, }
County of Cook, } ss:

I, Richard Prendergast, county judge of Cook county and sole presiding judge of the county court of Cook county, in the State of

Illinois, do hereby certify that Henry Wulff, Esq., whose name is subscribed to the foregoing certificate of attestation, now is and was at the time of signing and sealing the same the clerk of the county court of Cook county aforesaid and keeper of the records and seal thereof, duly elected and qualified to office, and that full faith and credit are and of right ought to be given to all his official acts as such in all courts of record and elsewhere, and that his said attestation is in due form of law and by the proper officer.

Given under my hand and seal, at my chambers, in Chicago, this 13th day of July, A. D. 1887.

[SEAL.] RICHARD PRENDERGAST, [SEAL.]
County Judge.

153 COMPL'T'- EX. "I." John I. Bennett, Master, &c.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

Hiram Coombs, of lawful age, being duly sworn, says that he resides in said county and is the agent of Isaac C. Ogden; that three months before the time for redemption of the lands or lots described in the annexed certificates of tax sale from the sale set forth therein expired, Hiram Coombs published in the Chicago Evening Journal, a newspaper of general circulation in said county and State, printed and published in said city of Chicago and county of Cook, a notice, in which notice he stated when the said H. Coombs did purchase the lands or lots described in the annexed certificates of tax sale, in whose names the same were taxed, the description of the land or lots so purchased at said tax sale, for what year the same were taxed or specially assessed, and when the time of redemption from said sale would expire.

Which said notice was inserted and published in said newspaper three times, the first time not more than five months and the last time not less than three months before the time of redemption would expire, to wit, on the 13th, the 14th, and the 15th days of May, A. D. 1879; and deponent further says that the printed slip filed with the county clerk on 30th day of August, A. D. 1879, being a copy of said notice cut from one of said newspapers, and the certificate of publication thereof as aforesaid by the publisher of said newspaper are filed as further evidence of such publication as aforesaid, and that he, this affiant, relies upon the facts stated in this and other affidavits hereto annexed and the said certificate
154 of publication as being in full compliance with the constitution and the revenue laws of the State of Illinois in this behalf, and requests that a deed of the premises described in the annexed certificates of tax sale may be issued to Isaac C. Ogden, of Knox, Albany county, State of New York, as provided by law.

HIRAM COOMBS.

Subscribed and sworn to before me this twenty-fifth day of March, A. D. 1880. HORACE G. DRURY,
[SEAL.] *Notary Public.*

Affidavit—Occupant Served.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

Adolph Kunz, of lawful age, being duly sworn, says that he resides in said county and is the agent of Hiram Coombs; that as such agent deponent, on the 5th day of May, A. D. 1879, being at least three months before the expiration of the time of redemption on the sale mentioned in annexed notice, served a notice, of which the annexed notice is a true copy, on W. H. Emerson by handing the same to and leaving the same with him personally, at Chicago, in said county. Deponent is acquainted with the land or lot mentioned in said notice, and the person so served was in actual possession or occupancy of said land or lot at least three months before the expiration of the time of redemption on the sale mentioned in said notice, to wit, on the 5th day of May, A. D. 1879.

ADOLPH KUNZ.

Sworn to this 10th day of July, A. D. 1879, before me—

EDWIN DRURY, [SEAL.]
Notary Public.

155 *Affidavit—Occupant Served.*

STATE OF ILLINOIS, }
County of Cook, } *ss:*

Thomas Cross, of lawful age, being duly sworn, says that he resides in said county and is the agent of Hiram Coombs; that as such agent deponent, on the 27th day of March, A. D. 1879, being at least three months before the expiration of the time of redemption on the sale mentioned in annexed notice, served a notice, of which the annexed notice is a true copy, on W. R. Wilson and Mrs. W. H. Emerson by handing the same to and leaving the same with them, each personally, at Chicago, in said county. Deponent is acquainted with the land or lot mentioned in said notice, and the persons so served were the only persons in actual possession or occupancy of said land or lot at least three months before the expiration of the time of redemption on the sale mentioned in said notice, to wit, on the 27th day of March, A. D. 1879.

THOMAS CROSS.

Sworn to this 10th day of July, A. D. 1879, before me—

EDWIN DRURY, [SEAL.]
Notary Public.

Affidavit—Assessee Non-resident.

STATE OF ILLINOIS, } ss:
County of Cook, }

Edward W. Cross, of lawful age, being duly sworn, says that he resides in said county and is the agent of Hiram Coombs; that the land or lot described in the annexed notice was taxed in the name of J. K. Pollard, and this deponent made diligent search and inquiry within the county aforesaid for J. K. Pollard, the person in whose name the said land or lot described in the notice at-
156 tached hereto was taxed, and, upon diligent search and inquiry, this affiant was unable to find him or hear of his being within said county or a resident thereof, and so deponent says that said J. K. Pollard, on the 27th day of March, A. D. 1879, the same being at least three months before the time of redemption on the sale mentioned in said notice expired as aforesaid, could not be found in said county of Cook.

EDWARD W. CROSS.

Sworn to this 10th day of July, A. D. 1879, before me—

EDWIN DRURY,
[SEAL.] *Notary Public.*

Notice of Sale for Tax.

To whom it may concern:

This is to notify you that on the 12th day of September, A. D. 1877, H. Coombs purchased at a sale of lots and lands for taxes authorized by the laws of the State of Illinois the following-described real estate, situated in the county of Cook and State of Illinois, taxed in the name of J. K. Pollard for the year A. D. 1876, to wit: Lot 13, in block 5, assessors' division of N. W. fractional ¼ of section 22, in township 39 north, of range 14 east, of third principal meridian, for the taxes levied and assessed thereon for the year A. D. 1876, and that the time of redemption thereof from said sale will expire on the 12th day of September, A. D. 1879.

HIRAM COOMBS.

Redemption may be made at the office of the county clerk.

157 County collector's office, Cook county, State of Illinois.

CHICAGO, *27th September*, 1879.

Received of Carne and Drury, agents, six hundred eighteen $\frac{96}{100}$ dollars and — cents in full of State, county, city, town, school, road,

park, and corporation taxes due for the year 1878 on the following-described property and forfeitures as extended on warrant of 1878:

Description.	Section.	Town.	Range.	No. of acres.	Subdiv.	Lot.	Block.	Valuation.	1878.	For't.	Total tax.
									Dall, Cts.	*Dall, Cts.*	*Dall, Cts.*
Ass'rs' div'n, N.W. fr'l — ...	22	39	14 E	....	....	13	5	30 15	133 24	485 28	618 52
										Costs,	11
											618 96

S. H. McCREA,
Co. Collector.

Parties remitting must send draft on Chicago, currency by express, or a post-office order.
J., 3-280.

____ ____,
County Collector,
By GOODMAN.

158 *South Park Assessment Receipt.*

County collector's office, Cook county, State of Illinois.

CHICAGO, *August* 5, 1879.

Received of Carne and Drury three and $\frac{64}{100}$ dollars in full for the seventh installment of the amount assessed against the following-described lot or parcel of land for benefits resulting thereto by reason of the location of the South park, with accrued interest, viz:

	Section.	Town.	Range.	No. of acres.	Subdiv.	Lot.	Block.	Dollars.	Cts.
Assessors' division, N. W. fr'l	22	39	14	.....	.....	13	5	2	31
									22
Interest from Sept. 2, 1872, to date of payment at rate of 7 per cent. per annum								1	11
								3	64

S. H. McCREA,
Co. Collector, County Collector,
By J. E. G.

N. B.—Parties remitting by mail or otherwise will please compute and add interest as indicated above; drafts on Chicago, currency by express, or a post-office order required.
8-385.

159 *South Park Assessment Receipt.*

Collector's office, Cook county, State of Illinois.

CHICAGO, *Aug.* 27, 1878.

Received of Carne & Drury, 48 & 50 La Salle St., three $\frac{49}{100}$ dollars in full for the sixth installment of the amount assessed against the following-described lot or parcel of land for benefits resulting thereto by reason of the location of the South park, with accrued interest, viz:

	Section.	Town.	Range.	No. of acres.	Sublot.	Lot.	Block.	Dollars.	Cts.
Assessors' div'n of N. W. fr'l ¼ ...	22	39	14	....	....	13	5	2	31
								Cost-,	22
Interest from Sept. 2, 1872, to date of payment at rate of 7 per cent. per annum									96
								3	49

S. H. McCREA,
County Collector,
By GOODMAN.

N. B.—Parties remitting by mail or otherwise will please compute and add interest as indicated above; drafts on New York or Chicago or a post-office order required.
10-39.

160 *State, County, and City Certificate of Sale for Taxes of A. D. 1876, &c.*

No. 5503. Volume 16, page —.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

This is to certify that at the June term, A. D. 1877, of the county court of said Cook county, on the application of Louis C. Huck, county treasurer and *ex officio* collector of the revenue of Cook county, for judgment for the delinquent State, county, city, town, park, boulevard, and *park* taxes and special assessments levied and assessed upon the lands and lots in the county of Cook and State of Illinois for the year 1876, and for judgment for the amount for which lands and lots were forfeited to the State of Illinois at the annual tax sale for State and county taxes for the year 1875, together with printers' fees, interest at 10 per cent., and back taxes and costs remaining due and unpaid thereon, and returned delinquent and unpaid by the town collectors of State and county taxes for said several years pursuant to law, a judgment was entered against the following-described lands or lots for so much of the said taxes and special

assessments, and the amount for which the same were forfeited to the State, as aforesaid, as were found to be due thereon, and costs, being for the sum of one hundred and forty dollars and thirty-eight cents, as follows, to wit:

Taxes, etc., A. D. 1876	$139 98
Costs	40
Total	$140 38

And in and by said judgment it was ordered by said court that said lands or lots, or so much thereof as should be sufficient to satisfy the amount of said judgment, be sold, as the law directs, to
161 wit: lot 13, block 5, in assessors' division of N. W. fr'l ¼ of section 22, town. 39 N., range 14 east, of the third principal meridian, situated in said Cook county, and that in pursuance of the statute in such case made and provided process was issued to said treasurer and *ex officio* collector of said county to sell said lands or lots or so much thereof as should be necessary to satisfy the said judgment; that by virtue of said process said collector did, on the 23rd day of July, A. D. 1877, open the sale upon said process; and, said sale being duly continued from day to day, by adjournment duly announced, and the same being reached in its order, said collector did this day offer for sale and did sell so much of said lands or lots as would pay the sum aforesaid, and that H. Coombs became the purchaser of the whole of said lands or lots and paid thereon the sum aforesaid, that being the least quantity of said lands or lots for which any person would pay the said amount due thereon:

Now, therefore, in case the said lands or lots above sold are not redeemed, in manner and form as the law directs, within two years from the date thereof, the said purchaser, his heirs or assigns, will be entitled to receive a deed of the lands or lots above sold, as by law directed.

Unless the holder of this certificate takes out the deed, as entitled by law, and files the same for record within one year from and after the time for redemption expires, then this certificate shall from and after the expiration of such one year be absolutely null. If the holder of this certificate shall be prevented from obtaining a deed by injunction or order of any court or by refusal of the clerk to execute the same, the time he is so prevented shall be excluded from the computation of such time.

162 In witness whereof I have hereunto subscribed my name and affixed the seal of said county court, at Chicago, in said county, this 12th day of September, A. D. 1877.

[SEAL.] HERMANN LIIB,
Clerk of the County Court.

Countersigned.

L. C. HUCK,
Treasurer and ex Officio Collector of Cook County.

For a valuable consideration I hereby sell, endorse, assign, transfer, and set over the within certificate to Isaac C. Ogden this 25th day of March, 1880, without recourse.

H. COOMBS.

Affidavit—Occupant Served.

STATE OF ILLINOIS, }
County of Cook, } ss:

Thomas Cross, of lawful age, being duly sworn, says that he resides in said county and is the agent of Hiram Coombs; that as such agent deponent, on the 27th day of March, A. D. 1879, being at least three months before the expiration of the time of redemption on the sale mentioned in annexed notice, served a notice, of which the annexed notice is a true copy, on W. R. Wilson and Mrs. W. H. Emerson by handing the same to and leaving the same with them each personally, at Chicago, in said county. Deponent is acquainted with the land or lot mentioned in said notice, and the persons so served were the only persons in actual possession or occupancy of said land or lot at least three months before the expiration of the time of redemption on the sale mentioned in said notice, to wit, on the 27th day of March, A. D. 1879.

THOMAS CROSS.

163 Sworn to this 10th day of July, A. D. 1879, before me—
EDWIN DRURY,
[SEAL.] *Notary Public.*

Affidavit—Occupant Served.

STATE OF ILLINOIS, }
County of Cook, } ss:

Adolph Kunz, of lawful age, being duly sworn, says that he resides in said county and is the agent of Hiram Coombs; that as such agent deponent, on the 5th day of May, A. D. 1879, being at least three months before the expiration of the time of redemption on the sale mentioned in annexed notice, served a notice, of which the annexed notice is a true copy, on W. H. Emerson by handing the same to and leaving the same with him personally, at Chicago, in said county. Deponent is acquainted with the land or lot mentioned in said notice, and the person so served was in actual possession or occupancy of said land or lot at least three months before the expiration of the time of redemption on the sale mentioned in said notice, to wit, on the 5th day of May, A. D. 1879.

ADOLPH KUNZ.

Sworn to this 10th day of July, A. D. 1879, before me—
EDWIN DRURY,
[SEAL.] *Notary Public.*

Affidavit—Assessee Non-resident.

STATE OF ILLINOIS, }
County of Cook, } ss:

Edward W. Cross, of lawful age, being duly sworn, says that he resides in said county and is the agent of Hiram Coombs; that the land or lot described in the annexed notice was taxed in the name

of J. K. Pollard, and this deponent made diligent search and
164 inquiry within the county aforesaid for J. K. Pollard, the person in whose name the said land or lot described in the notice attached hereto was taxed, and, upon diligent search and inquiry, this affiant was unable to find him or hear of his being within said county or a resident thereof, and so deponent says that said J. K. Pollard, on the 27th day of March, A. D. 1879, the same being at least three months before the time of redemption on the sale mentioned in said notice expired as aforesaid, could not be found in said county of Cook.

EDWARD W. CROSS.

Sworn to this 10th day of July, A. D. 1879, before me—

EDWIN DRURY,
Notary Public.

[SEAL.]

Notice of Tax Sale.

To whom it may concern:

This is to notify you that on the 12th day of September, A. D. 1877, H. Coombs purchased, and subsequently assigned the certificate of purchase to me, at a sale of lots and lands for taxes authorized by the laws of the State of Illinois, the following-described real estate, in the county of Cook and State of Illinois, taxed in the name of J. K. Pollard for the year A. D. 1876, to wit, lot 14, in block 5, assessors' division of N. W. fractional ¼ of section 22, in township 39 north, of range 14 east, of third principal meridian, for the taxes levied and assessed thereon for the year A. D. 1876, and that the time of redemption thereof from said sale will expire on the 12th day of September, A. D. 1879.

HIRAM COOMBS.

Redemption may be made at the office of the county clerk.

165 Collector's office, Cook county, State of Illinois.

CHICAGO, *27th September*, 1879.

Received of Carne and Drury, agents, six hundred seven $\frac{25}{100}$ dollars and — cents in full of State, county, city, town, school, road, park, and corporation taxes due for the year 1878 on the following-described property and forfeitures as extended on warrant of 1878:

Description.	Section.	Town.	Range.	No. of acres.	Sublot.	Lot.	Block.	Valuation.	1878.	For't.	Tax.
									Doll. Cts.	*Doll. Cts.*	*Doll. Cts.*
Ass div'n, N. W. fr'l ¼.....	22	39	14 E.	.....	.....	14	5	3,421	151 19	455 65	606 84
										Costs,	44
											607 28

S. H. McCREA,
Co. Collector, County Collector,
By GOODMAN.

Parties remitting must send draft on Chicago, currency by express, or post-office order.
J., 3–280.

166 *South Park Assessment Receipt.*

Collector's office, Cook county, State of Illinois.

CHICAGO, *August 5th*, 1879.

Received of Carne and Drury three $\frac{64}{100}$ dollars in full for the seventh installment of the amount assessed against the following-described lot or parcel of land for benefits resulting thereto by reason of the location of the South park, with accrued interest, viz:

	Section.	Town.	Range.	No. of acres.	Sublot.	Lot.	Block.	Dollars.	Cts.
Assessors' division, N. W. fr'l ¼	22	39	14	.....	.....	14	5	2	31
									22
Interest from Sept. 2, 1872, to date of payment at rate of 7 per cent. per annum								1	11
								3	64

S. H. McCREA,
Co. Collector, County Collector,
By J. E. G.

N. B.—Parties remitting by mail or otherwise will please compute and add interest as indicated above; drafts on Chicago, currency by express, or post-office order required.
8–385.

167 *South Park Assessment Receipt.*

County collector's office, Cook county, State of Illinois.

CHICAGO, *Aug.* 27, 1878.

Received of Carne and Drury, 48 & 50 La Salle St., three $\frac{49}{100}$ dollars in full for the sixth installment of the amount assessed against the following-described lot or parcel of land for benefits resulting thereto by reason of the location of the South park, with accrued interest, viz:

	Section.	Town.	Range.	No. of acres.	Sublot.	Lot.	Dollars.	Cents.
Asser. div'n of N. W. fr'l ¼	22	39	14	....	....	14	2	31
							Costs,	22
Interest from Sept. 2, 1872, to date of payment at rate of 7 per cent. per annum								96
							3	49

S. H. McCREA,
County Collector,
By GOODMAN.

N. B.—Parties remitting by mail or otherwise will please compute and add interest as indicated above; drafts on New York or Chicago or a post-office order required.
10–39.

168 *State, County, and City Certificate of Sale for Taxes of A. D. 1876, &c.*

No. 5504. Volume 16, page 149.

STATE OF ILLINOIS, }
Cook County, } *ss.:*

This is to certify that at the June term, A. D. 1877, of the county court of said Cook county, on the application of Louis C. Huck, county treasurer and *ex officio* collector of the revenue of Cook county, for judgment for the delinquent State, county, city, town, park, boulevard, and *park* taxes and special assessments levied and assessed upon the lands and lots in the county of Cook and State of Illinois for the year 1876, and for judgment for the amount for which lands and lots were forfeited to the State of Illinois at the annual tax sale for State and county taxes for the year 1875, together with printers' fees, interest at 10 per cent., and back taxes and costs remaining due and unpaid thereon, and returned delinquent and unpaid by the town collectors of State and county taxes for said several

years pursuant to law, a judgment was entered against the following-described lands or lots for so much of the said taxes and special assessments, and the amount for which the same were forfeited to the State, as aforesaid, as were found to be due thereon, and costs, being for the sum of one hundred and forty-two dollars and eighty cents, as follows, to wit:

Taxes, etc., A. D. 1876	$142 40
Costs	40
Total	$142 80

169 And in and by said judgment it was ordered by said court that said lands or lots, or so much thereof as should be sufficient to satisfy the amount of said judgment, be sold, as the law directs, to wit, lot 14, block 5, in assessors' division of N. W. fr'l ¼ of section 22, town. 39 N., range 14 east, of the third principal meridian, situated in said Cook county, and that in pursuance of the statute in such case made and provided process was issued to said treasurer and *ex officio* collector of said county to sell said lands or lots or so much thereof as should be necessary to satisfy the said judgment; that by virtue of said process said collector did, on the 23rd day of July, A. D. 1877, open the sale upon said process; and, said sale being duly continued from day to day, by adjournments duly announced, and the same being reached in its order, said collector did this day offer for sale and did sell so much of said lands or lots as would pay the sum aforesaid, and that H. Coombs became the purchaser of the whole of said lands or lots and paid thereon the sum aforesaid, that being the least quantity of said lands or lots for which any person would pay the said amount due thereon:

Now, therefore, in case the said lands or lots above sold are not redeemed, in manner and form as the law directs, within two years from the date thereof, the said purchaser, his heirs or assigns, will be entitled to receive a deed of the lands or lots above sold, as by law directed.

Unless the holder of this certificate takes out the deed, as entitled by law, and files the same for record within one year from and after the time for redemption expires, then this certificate shall from and after the expiration of such one year be absolutely null. If the
170 holder of this certificate shall be prevented from obtaining a deed by injunction or order of any court or by refusal of the clerk to execute the same, the time he is so prevented shall be excluded from the computation of such time.

In witness whereof I have hereunto subscribed my name and affixed the seal of said county court, at Chicago, in said county, this 12th day of September, A. D. 1877.

[SEAL.] HERMANN LIEB,
Clerk of the County Court.

Countersigned.

L. C. HUCK,
Treasurer and ex Officio Collector of Cook County.

For a valuable consideration I hereby sell, endorse, assign, transfer, and set over the within certificate to Isaac C. Ogden this 25th day of March, 1880, without recourse.

H. COOMBS.

STATE OF ILLINOIS, }
County of Cook, } ss:

I, Henry Wulff, clerk of the county court of Cook county, in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true and correct copy of the application, notices, and affidavits, together with the sale certificates upon which tax deed No. K 1080, dated March 26th, A. D. 1880, *were* issued to Isaac C. Ogden by E. F. C. Klokke, county clerk, in so far as the same relates to the premises described in the foregoing copy, all of which appears from the records and files of my office.

In witness whereof I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 20th day of June, A. D. 1887.

[SEAL.]

HENRY WULFF,
Clerk of the County Court.

171

STATE OF ILLINOIS, }
County of Cook, } ss:

I, Richard Prendergast, county judge of Cook county and sole presiding judge of the county court of Cook county, in the State of Illinois, do hereby certify that Henry Wulff, Esq., whose name is subscribed to the foregoing certificate of attestation, now is and was at the time of signing and sealing the same the clerk of the county court of Cook county aforesaid and keeper of the records and seal thereof, duly elected and qualified to office, and that full faith and credit are and of right ought to be given to all his official acts as such in all courts of record and elsewhere, and that his said attestation is in due form of law and by the proper officer.

Given under my hand and seal, at my chambers, in Chicago, this 13th day of July, A. D. 1887.

[SEAL.] RICHARD PRENDERGAST, [SEAL.]
County Judge.

172 DEFENDANTS' EX. "A." J. L. B., Master, &c.

Office of Carne & Drury, 48 and 50 La Salle St., Chicago.

Acc't No. 3059, *No.* 72—, *Deed, & Nos.* 1219 & 1220, 1221, *Certificates.*

Lots 13 and 14 of block 5, assessors' division of N. W. fr'l ¼ of section 22, township 39 north, range 14 east, to sale of September 12th, 1877, for delinquent — and expenses incidental thereto, corner of 13th street & Wabash Ave., Dr.

Date.			*Items.*			
Month.	Day.	Year.				
Sep.	12,	1877.	To amount of sale			$283 18
			To premium on sale			283 18
Aug.	27,	1878.	To subsequent taxes paid:			
			Lot 13	$83 49		
			" "	3 64		
			" "	618 96		
					$626 09	
			Lot 14	3 49		
			"	3 64		
			"	607 28		
					614 41	
						1,240 50
			Exp. of tax deed. To ten per cent. on taxes paid			124 05
			To advertising notice of sale three times			2 00
			To serving notices, making affidavits, and application for deed			100 00
			To county clerk's fee, recording evidence, acknowledging and issuing deed			6 00
			To fees of county recorder, Book 982, page 142			
			To abstract of names of parties interested			15 00
						2,053 91
			To annual interest from the expiration of the time of redemption at ten per cent., viz., Sep. 30, A. D. 1879, to June 30, A. D. 1882, 33 months			564 81
			To consideration for quitclaim deed, in addition to taxes paid, penalties, and costs			3,000 00
Oct.	11,	1880.	Sale No. 1219, lots 13 & 14	262 58		
			No. 1220, lot 13	330 84		
			No. 1221, lot 14	393 11		
					986 53	
			Penalty, 100		986 53	
July	29,	1881.	Paid 1880 taxes		259 46	
			Interest		25 94	
			Av.		2 00	
						2,260 46
						$7,879 18

Good to 1st July, 1882.

CARNE & DRURY, *Agents.*

Deed Book (315).

Arthur D. Rich, Esq.

DEAR SIR: We enclose you statement as desired.

Respectfully,

CARNE & DRURY.

20 June, 1882.

Errors and omissions excepted.

NOTICE.—The above price is for cash, and unless paid within the time specified will not be accepted.

173 *Acc't No. 3059, No. 7273, 1219, 1220, & 1221, Sale Record, Vol. —, p. —; Deed, V. 3, p. 5.*

Sublot — of lots 13 and 14 of block 5, in assessors' div'n of N. W. fr'l ¼, — addition to Chicago, — subdivision of — of section 22, township 39 north, range 14 east, to sale of ——, 18—, for delinquent — and expenses incidental thereto. Dr.

Date.			*Items.*		
Month.	Day.	Year.			
Sept.	12,	1877.	To amount of sale 1876, St., Co., & city		8283 18
			To premium on sale		283 18
Aug.	27,	1878.	To subsequent taxes paid 6th inst. So. Park ass't,	6 98	
"	5,		7th " "	7 28	
					14 26
			Exp. of tax deed. To ten per cent. on taxes paid		1 46
			To advertising notice of sale three times		2 00
			To serving notices, making affidavits and application for deed		15 00
			To county clerk's fee recording evidence, acknowledging and issuing deed		
			To fees of county recorder, Book 982, page 142		5 00
			To abstract of names of parties interested		10 00
					614 08
			To annual interest from the expiration of the time of redemption at ten per cent., viz. (7 years 4 mons. 19 days), Sept. 12, A. D. 1879, to Jan'y 31, A. D. 1887		452 49
			To consideration for quitclaim deed, in addition to taxes paid, penalties, and costs		
Sept.	27,	1879.	To subtaxes paid 1878, St., Co., & city, and forfeitures	1,226 24	
			To int. 6a 10 % to Jan'y 31, 1887	900 57	
					2,126 81
Oct.	11,	1880.	" sale 1873, 1874, 1875, & 1879	986 53	
			" penalty	986 53	
July	20,	1881.	" pay't 1880, St., Co., & city	259 46	
			" 1881, " "	260 13	
			" " sp'l ass't No. 4066	484 31	
				1,003 90	
			" int. 6a 10 % to Oct. 11, 1882	44 26	
			" adv., not., Co. cl'k's fees, &c., &c.	52 00	
					3,073 22
			" int. from Oct. 11, '82, to Jan'y 31, 1887		1,323 17
Sept.	29,	1883.	" pay't 1882, St., Co., & city	373 21	
			" int. to Jan'y 31, 1887	124 60	
					497 81
			" law expense, court costs, &c.		300 00
					88,387 58

Errors and omissions excepted.

NOTICE.—The above price is for cash, and unless paid within the time specified will not be accepted.

(Endorsed:) Filed the 1st day of Oct., 1888. Wm. H. Bradley, clerk.

174 Afterward, to wit, on the second day of October, 1890, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

UNITED STATES OF AMERICA,
Northern District of Illinois.

In the Circuit Court Thereof.

AUGUSTUS RUSS
vs.
JOHN CARNE *et al.* } In Equity.

It is stipulated between the counsel for the respective parties in this case that Complainant's Exhibit "B," referred to in the master's report and other proceedings herein, was a warranty deed, dated March 20th, 1872, made by Calvin P. Austin and Arthur D. Rich and Esther Rich, his wife, conveying the premises in question to Augustus Russ, complainant herein; was acknowledged on the 4th and 8th days of May, 1872, and after delivery was recorded in the recorder's office of Cook county, Illinois, on the 13th of May, 1872, in Book 58 of Records, page 374; that the consideration named in said deed was $33,000, and that said deed by its terms was to operate as to Calvin P. Austin as a quitclaim deed only. Said deed having passed beyond the control of the parties respectively,
175 this stipulation is made in lieu thereof, and is to have the same force and effect in all respects as if the said deed was inserted at length in the transcript of the record of this case. Said deed was identified by the master and retained by complainant's counsel for production on the trial.

Dated this 30th day of September, A. D. 1890.

ALLAN C. STORY,
Solicitor for Complainant.
SMITH & HARLAN,
Solicitors for Defendants.

(Endorsed:) Filed Oct. 2, 1890. Wm. H. Bradley, clerk.

176 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court, made in accordance with the stipulation filed October second, 1890, in the cause wherein Augustus Russ is complainant and John Carne, Jr., Edwin Drury, Hiram Coombs, Isaac C. Ogden, and E. F. C. Klokke are defendants, as the same appears from the records and files of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, northern division, this third day of October, 1890.

WM. H. BRADLEY, *Clerk.*

Endorsed on cover: Case No. 14,235. N. Illinois C. C. U. S. No. 229. John Carne, Jr., Isaac C. Ogden, Hiram Coombs, Edwin Drury, and Henry Wulff, county clerk, appellants, *vs.* Augustus Russ. Filed October 10, 1890.

Office Supreme Court U. S.
FILED.
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1893.

No. 229.

JOHN CARNE, JR., ISAAC C. OGDEN, HIRAM COOMBS, EDWIN DRURY, AND HENRY WULFF, COUNTY CLERK,

Appellants,

vs.

AUGUSTUS RUSS,

Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

ARGUMENT FOR APPELLANTS.

GEORGE W. SMITH,
COUNSEL FOR APPELLANTS.

BARNARD & GUNTHORP, PRINTERS, CHICAGO

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Appeal from the Circuit Court of the United States for the Northern District of Illinois.

STATEMENT OF THE CASE.

This is an appeal from a decree of the court below in favor of appellee Russ on a bill filed by him for the purpose of having declared void, and removed as a cloud on his title to certain real estate in Chicago, a tax deed and tax certificate thereon held by appellant Ogden.

The bill was filed in the Circuit court of Cook county, Illinois, on August 7, 1882, against the appellants herein. Appellant Ogden, a citizen and resident of New York, was not brought into the suit either by summons

or publication, but on February 26, 1886, voluntarily entered his appearance in the State court and removed the case to the Federal court.

The premises in controversy consist of two improved lots on the north-east corner of Wabash avenue and Thirteenth street, Chicago (near the business center of the city), which were purchased by Russ sometime in 1872 for $33,000 (Rec., 48), and which, at the time of the filing of the bill, were worth from $40,000 to $50,000. (Rec., 55.) William H. Emerson, agent for Russ, had charge of the premises from the time they were purchased, and collected the rents. (Rec., 37.) Russ and Emerson neglected, however, to pay the taxes for the years 1873 to 1882, inclusive. The property was forfeited to the state for the taxes for the years 1873, 1874, and 1875, but in 1877, at the sale that year for the delinquent taxes of 1876, was sold to Ogden's agent. Ogden also paid the taxes for 1877 and 1878, to protect his purchase. A tax deed was issued to Ogden on March 16, 1880, on the sale of 1877. On October 11, 1880, the property was sold to appellant Carne, agent for Ogden, for the taxes of 1873, 1874, 1875 and 1879, and a certificate was issued to Carne by the county clerk for the sale of that date, being the deed and certificate above referred to and involved in this suit. The taxes for the years 1880, 1881 and 1882 were alsopaid by Ogden.

Appellants Carne, Drury and Coombs (composing the firm of Carne & Drury), who were engaged in the business of making tax purchases in Chicago, acted as agents for Ogden in the foregoing tax purchases and payments.

On October 10, 1882, being the day prior to the expiration of the time of redemption from said sale of

October 11, 1880, the state court in this suit temporarily enjoined the defendants from transferring this certificate, or causing a tax deed to be issued thereon. (Rec., 8.)

1. *The legality of the tax deed.*

The bill alleged non-compliance by Ogden with the requirements of the laws of Illinois regarding the giving of notice of the sale and non-redemption to the assessee of the land. The master reported, and the court found, overruling defendants' exception in this regard, that this allegation was sustained by the proofs, and accordingly decreed this deed to be void.

The allegation of the bill was "that prior to the issu-" ance of said tax deed by the said Klokke, as aforesaid, " the said Coombs, Ogden, Carne or Drury did not cause " diligent inquiry to be made to ascertain if the person in " whose name the lots of your orator aforesaid were taxed " might be found in said Cook county, nor serve such " person." (Rec., 3.)

The answers averred that defendants "did cause dili-" gent inquiry to be made in Cook county for J. K. " Pollard, the person in whose name said lots were " taxed, and that upon such diligent inquiry they were " unable to find said Pollard in said Cook county." (Rec., 7, 15.)

The affidavit of Cross, filed with the county clerk, stated that on March 27, 1879, being at least three months before the time of redemption, he could not find Pollard in said county after diligent search and inquiry. (Rec., 79.)

The testimony showed that Pollard had had no interest in these premises after November 16, 1866, when

he sold them to Austin, who, in 1872, conveyed them to complainant. (Rec., 47, 48.) Pollard was not called, but complainant attempted to prove by others that Pollard had continuously resided in Chicago since his sale, and resided there during the time notice should have been served on him. (Rec., 43, 46, 47, 48.)

Defendant's first exception to the master's report was: "That the master has found that the notice was confessedly not served upon John K. Pollard as required "by law," whereas the evidence shows that the reason "said Pollard was not served with notice, was that "upon diligent inquiry he could not be found in Cook "county." (Rec., 26.)

2. *The legality of the sale of 1880.*

Regarding the certificate issued upon this sale, the bill alleged "that the taxes upon which the said tax "certificate is predicated were both illegally levied and "apportioned, and that the same were illegally returned "as delinquent: that no judgment for the same has "ever been rendered; that no legal precept has ever "been issued, and that no legal sale has ever taken "place." (Rec., 3.)

The proofs introduced by complainant simply showed that the sale in 1880 embraced the taxes of 1873–4–5, as well as those of 1879. (Rec., 59–76.)

The master reported adversely as to this sale on the ground that having been made while Ogden claimed ownership under the former tax deed, it would "fall "within the rule that a tax purchase by the owner of "lands must be considered merely as a payment of the "taxes," and that complainant was therefore entitled to a cancellation of the certificate upon payment of the

amount paid at the latter sale and subsequent tax payments with equitable interest. (Rec., 21.)

The fourth exception of the defendants related to this finding, and claimed "the master should have found "that if the tax deed issued to the defendant Ogden, "and bearing date March 16, 1880, is held not to con- "fer ownership upon said Ogden, but is invalid as a "paramount title and is a cloud upon the title of com- "plainant, then said complainant can redeem from the "sale of October 1, 1880, only upon the statutory con- "ditions applicable to such redemptions." (Rec., 26.)

The decree found this certificate "was illegal and "void because the taxes for the years 1873, 1874 and "1875, respectively, for which in part said premises "were sold, as mentioned in said certificates, were no "longer a lien and charge upon said premises after the "sale of the lands in 1877, for the taxes of 1876, under "which the deed to Ogden above mentioned purports "to have been issued." (Rec., 29.)

3. *The tender of August 7, 1882.*

One of the questions in this case grows out of the tender claimed to have been made to Carne & Drury in behalf of Russ on August 7, 1882, and its effect in stopping interest from that date.

The allegation of the bill in that regard is as follows:

"And your orator further shows that he has tendered "to the said Carne & Drury the full amount of any "taxes upon the said lots which they or either of them "have paid, or any of the defendants have paid, or the "said Coombs or the said Ogden have paid, and also the "full amount for which the said lots were pretendedly "sold by proceedings which eventuated in the said tax

"deeds and also the full amount of said pretended sale "on October 11, 1880, together with all taxes paid by "the defendants, or either of them, with interest." The complainant also offered to do equity. (Rec., 4.)

Two witnesses, Emerson and Russell, testified on behalf of the complainant as to the alleged tender.

Mr. Emerson, that on August 7, 1882, the date of the filing of the bill, as agent for Mr. Russ, he tendered Carne & Drury, at their office, $3,200 in currency; that they refused to accept the money, and that he then went back to the office of Mr. Story; that Mr. Russell accompanied him to Carne & Drury's office. (Rec. 36, 37.)

"The money I offered to tender came from Mr. Russ "and was returned to him." (Rec., 40.)

Mr. Russell swore that he made a computation of the amount due in order to effect a redemption from these tax claims, and that $3,200, which was the amount computed, was tendered by him to Mr. Carne on August 7, 1882. (Rec., 44, 45.)

Mr. Carne denied that tender was ever made to him.

The tender was not, however, kept good, the money not having been deposited in court, or otherwise put at the disposal of Ogden, but was returned to Russ, who had the use of the money from the time of this alleged tender until payment by him into court on May 21, 1890, in compliance with the decree herein. (Rec., 30.)

The master found that the tender was not sufficient to stop the running of interest, and interest was accordingly allowed by him to Ogden at six per cent. (Rec., 23, 24.)

4. *The amount Russ should have been decreed to pay.*

THE ANSWER OF OGDEN, which was filed on March 26, 1886, averred that "the complainant, by himself or his "tenants, has been in the possession of said lots since "September 12, 1877, and has enjoyed the rents and prof-"its thereof, amounting, as this defendant is informed and "believes, for a very large portion of the time, to the sum "of three thousand dollars per annum; that said premises "are situated upon Wabash avenue, in the city of Chi-"cago, and are of the value of the sum of thirty-"five thousand dollars; that the said complainant "has been represented in the city of Chicago by one "Emerson, and that since the sale of September 12, 1877, "this defendant, through said Carne & Drury, or some one "of the members of said firm, or said Coombs, has fre-"quently applied to said Emerson to pay to this defendant "the amount required by law to redeem said premises and "has offered to allow the same to be redeemed upon such "terms.

"And this defendant now here, while insisting that "the sales hereinabove mentioned were in all respects "regular and valid, and that said tax deed operated to "convey said premises to this defendant, offers to waive "his claim of ownership to said premises and his claim "under the certificate aforesaid, and to surrender said "certificate, and to reconvey said premises to said com-"plainant if said complainant will pay him the amounts "which have been paid by this defendant on account of "said premises, with the penalties which have accrued "thereon, and ten per cent. interest on the sums so paid "from the date of payment, together with the outlays "of this defendant for expenses and charges in connec-

" tion with said payment and the procuring of said deed " and in advertising." (Rec., 16.)

Testimony was introduced before the master on behalf of Ogden to the effect that a return of the moneys disbursed by him for taxes with six per cent. interest thereon, would not only not be fair compensation to him, but would also not reimburse him his outlays.

From this testimony it appears that the firm of Carne & Drury, from the years 1877 to 1882, invested annually in tax sales for Mr. Ogden, paying the subsequent taxes on the purchases made, and doing all other things necessary to protect such purchases, such as examining the records of title of the property purchased for the purpose of ascertaining the owners' names, so as to notify them that their property had been sold for taxes, and also examining the tax records for the same purpose. " At the proper time each year we prepared notices of " tax sales, served them on the occupants of the prem- " ises purchased; also on the owners of and parties inter- " ested in the property. In case no redemption was made " after these notices were served, we then prepared " affidavits of such service, attached them to the certifi- " cates of tax sales with the receipts for subsequent " taxes paid, and filed them with the county clerk for " his evidence upon which to base his deed. After the " deed was issued we filed the same for record." (Rec., 56.)

" We were paid five per cent. commission on the " amount of each sale, $3 certificate for the examination " of the title records, $10 certificate for tax abstracts, " and $18 for each certificate that ran to a tax deed." (Rec., 56.)

Carne & Drury received from Mr. Ogden on the sale

of 1877 five per cent. on the amount of the tax purchase, $6 for title minutes, $20 for tax abstracts, and $36 for serving notices. On the sale of 1880 they received five per cent. commission.

The premises were advertised under both sales—the expense of advertising under the first sale being $1 per lot, and on the sale of 1880 $5 per lot. (Rec., 57.)

The prevailing rate of interest in Chicago in commercial transactions, from 1878 to 1882, was from eight to ten per cent. (Rec., 58.) Mr. Coombs testified that in his judgment a fair compensation to Mr. Ogden for the investments made by him in respect to this property and the costs and disbursements incurred by him on account of it would be the legal penalties and eight per cent. in addition; that six per cent. interest with the return of the principal invested would not be fair compensation. (Rec., 59.)

The master found that "various sums are proven to "have been paid by defendant Ogden for various pur- "poses other than in tax purchases and subsequent pay- "ment of taxes on these lots. I have disallowed all "claims for such payments." (Rec., 23.) He recommended that Russ be allowed to redeem on repayment of the amounts paid by Ogden for taxes, with interest thereon at six per cent., making a total of $5,700.67 on October 1, 1888, the date of the master's report. (Rec., 23.)

Exceptions were filed by both parties to this report. (Rec., 24–27.)

The sixth exception of defendants was as to the disallowance of the sums paid by Ogden for various purposes other than tax purchases, etc.; "such claims should

"have been allowed, since said payments were made to "protect and preserve the property, and will enure to "the benefit of complainant if said deed to Ogden, dated "March 16, 1880, should be declared a cloud upon com- "plainant's title, and he be allowed to redeem from the "tax sale of October 1, 1880." (Rec., 26.)

"7th. For that the master charges complainant for "the purpose of redemption from the tax sales of Septem- "ber 12, 1877, and October 1, 1880, upon the former of "which the deed sought to be set aside as a cloud upon "complainant's title is based with only the amounts of "the purchase money at said tax sales; whereas, said "complainant, having failed for two years to redeem "from either of said tax sales, should, in pursuance of "section 212, chapter 120, Revised Statutes, be charged "in each case with the purchase-money increased by the "penalty of one hundred per centum, and upon such "total interest at the rate of ten per centum should be "allowed in respect of the former sale from September "12, 1879, and in respect of the latter from October 1, "1882."

"10th. For that the master has allowed the com- "plainant to have said tax deed set aside as a cloud on "his title, and to redeem from the tax sale of October "1, 1880, upon terms that are inequitable and do not "afford fair, adequate and just compensation for their "expenses and outlays on account of said purchases at "said tax sales and to protect said property." (Rec., 27.)

Final decree was entered *on May 20, 1890*, allowing complainant to redeem on payment of said $3,200, which the court found had been tendered prior to the commencement of this suit "in full discharge of all liens

"and claims upon said premises by virtue of the respec-
"tive sales named in the said deed and the said certifi-
"cates, but which the defendants refused to accept,
"which the court finds was the full amount which the
"defendants were entitled to receive, including interest
"to the time of such tender;" and also the additional sum of $744.44, which the court found was paid by Ogden on August 10, 1882; "which sum, with interest "thereon, from said date at six per cent. per annum, the "said defendant, Ogden, is also entitled to receive in "addition to the said sum of thirty-two hundred dollars "as a condition for the removal of the said deed and "sales in the said bill mentioned." (Rec., 29.)

The following statement shows the payments made by Carne & Drury, on behalf of Mr. Ogden, for tax purchases and tax payments of the property in controversy, and also the interest thereon at six per cent. (the rate allowed by the decree) to May 20, 1890, the date of the entry of the decree:

		Payment.	Interest.
1877.			
Sep. 12,	Tax sale for taxes 1876..	$ 283 18	$ 214 17
1878.			
Aug. 27,	6th installment. So. Pk. Asst.....	6 98	4 91
1879.			
Aug. 5,	7th ditto.	7 28	4 68
Sep. 27,	Taxes 1878 and forfeiture 1877.....	1,226 24	781 32
1880.			
Oct. 11,	Tax sale, taxes 1873–4–5 and 1879.....	986 53	567 69
1881.			
July 20,	Taxes 1880.....	259 46	137 51

1882.				
Aug. 10.	Taxes 1881	$260 13		
	Spec. No. 4066	484 31	744 44	347 40
1883.				
Sep. 29.	Taxes 1882		373 21	148 39
			$3,857 32	$2,206 07
Total payments and interest				$6,093 39

(Rec., 17, 23, 29, 30, 53, 54.)

The tender of $3,200 included all of the items in the foregoing statement prior to August 10, 1882, with interest thereon at six per cent. to August 7, 1882. In addition to this amount the decree required the payment of the items of August 10, 1882, with interest thereon, making in all the sum of $4,291.84, which complainant paid into court on May 21, 1890, in compliance with the decree. (Rec., 28.)

The court did not require complainant to refund the payment made by Ogden on September 29, 1883, of the taxes of 1882, such sum with interest amounting at the date of the decree to $521.60, and no reason for this omission is apparent. Mr. Carne testified to the payment (Rec., 54) and it was not disputed.

Had the court below held that the tender of August 7, 1882, did not operate to stop the interest, then Ogden would, on the date of the decree, have been entitled to at least $6,093.39, the aggregate of his payments and six per cent. interest thereon, or $1,801.55 more than was deposited in court in compliance with the decree.

Had Ogden been decreed the amounts for which by his answer he offered to relinquish the property, Russ would have been required to pay the following amounts:

Tax payments, &c.....	$3,887 32
Penalty on sale of 1877.....	283 18
Penalty on sale of 1880.....	986 53
Interest at 10 per cent. to date of decree....	3,422 84
Expenses.....	62 00
Commissions paid Carne & Drury.....	63 47
Or a total of.....	$8,705 34

The questions raised on this appeal are stated in the following assignment of errors:

ERRORS ASSIGNED.

The court erred:

1st. In decreeing the tax deed to be null and void.

2d. In decreeing the tax certificate to be null and void.

3d. In not decreeing the payment by Russ of interest after August 7, 1882, the date of the alleged tender, on the amounts shown to have been paid by Ogden for taxes and assessments prior to that date.

4th. In not decreeing payment by Russ of $373.21 paid by Ogden on September 29, 1883, for the taxes of 1882, with interest thereon.

5th. In not requiring Russ to redeem from said sale of October 11, 1880, upon the statutory conditions applicable to redemptions.

6th. In not decreeing the payment by Russ of payments proven to have been made by Ogden other than in tax purchases and payments, but necessarily relating to and growing out of such payments and purchases.

7th. In not decreeing Ogden the amounts for which by his answer he offered to relinquish the property.

ARGUMENT.

I.

THE TAX DEED.

The decree found this deed to be void "because the "proper statutory notice was not given to the assessee "of said premises prior to the expiration of the period "of redemption from the tax sales provided by law." (Rec., 29.)

The statute of Illinois relating to the giving of such notice provided:

"Hereafter no purchaser or assignee of such purchaser "of any land, town or city lot, at any sale of lands * * * "shall be entitled to a deed for the lands or lots so pur- "chased, until the following conditions have been com- "plied with, to wit: Such purchaser or assignee shall "serve, or cause to be served, a written or printed, or "partly written and partly printed notice of such pur- "chase on every person in actual possession or occu- "pancy of such land or lot, and also the person in "whose name the same was taxed or specially assessed, "if upon diligent inquiry he can be found in the county, "at least three months before the expiration of the time "of redemption on such sale." (R. S. Ill., 1874, Sec. 216, Ch. 120.)

The time of redemption from the sale expired on September 12, 1879. The affidavit of Cross showed that Pollard could not on diligent inquiry, be found in the county on March 27, 1879. The evidence introduced by complainant tended to show that Pollard was a resident

of the county, but did not show that Pollard could, upon diligent inquiry, be found within the county on March 27, 1879, or that he was in the county on that date. Defendant's first exception to the master's report should, therefore, have been sustained.

II.

THE TAX CERTIFICATE.

The court found the certificate to be void, because the taxes for the years 1873–4–5, for which the premises were in part sold, were not a lien on the premises after the sale in 1877 for the taxes of 1876. (Rec., 29.)

The allegation of the bill "that no legal sale has ever "taken place," was in the nature of a conclusion of law, and there was no other allegation of the bill covering this finding of the court. There was, therefore, no allegation of the bill on which the court could base its finding.

The cases in which it has been held that a sale of land for taxes frees it from the lien of delinquent taxes of prior years, have been cases in which the rights of subsequent adverse purchasers were involved. No such rights are involved here, appellant Ogden having purchased at both sales. Russ, having made default in the payment of his taxes, and having allowed his property to go to sale, should not now be heard to object to such sales.

Having filed his bill before the statutory period of redemption from this sale had expired, and not having proved the allegations of his bill regarding this certificate, he should at least have been decreed to pay the

statutory penalties as a condition to redemption from this sale.

The statutes of Illinois relating to redemption from tax sales in force at the time of the filing of the bill and since, provide as follows:

"Real property sold under the provisions of this act "may be redeemed at any time before the expiration of "two years from the date of sale, by payment in legal "money of the United States, to the county clerk of the "proper county, the amount for which the same was "sold, and twenty-five per cent. thereon if redeemed at "any time before the expiration of six months from the "day of sale; if between six and twelve months, fifty per "cent; if between twelve and eighteen months, seventy-"five per cent.; and if between eighteen months and two "years, 100 per cent. on the amount for which the same "was sold. The person redeeming shall also pay the "amount of all taxes and special assessments accruing "after such sale, with ten per cent. interest thereon "from the day of payment, unless such subsequent "tax or special assessment has been paid by or on be-"half of the person for whose benefit the redemption is "made, and not by the purchaser at the tax sale, or his "assignee."

(R. S. Illinois, Sec. 212, Chap. 120.)

III.

THE TENDER OF AUGUST 7, 1882.

We understand the rule to be that on a bill of this nature, the complainant is bound to do equity, and at least "reimburse the purchaser to the extent of all

" taxes paid by him, whether those for which the prop-
" erty was sold, or those subsequently levied thereon and
" paid by him, with interest on each sum."

Gage v. *Pumpelly*, 115 U. S., 463.

But the court below held that the tender of August 7, 1882, was made as alleged, and that complainant was not entitled to interest on the payments embraced in that tender, although Russ subsequently had the use of the money tendered.

Emerson testified that he returned to Russ the money which he used in making the tender. No steps were taken to keep the tender good, so as to stop the interest. No money was paid into court or otherwise placed at the disposal of Ogden until on May 21, 1890, when Russ paid $4,291.84 into court in compliance with the decree of the previous day.

This court has stated the rule to be that " to have the
" effect of stopping interest and costs a tender must be
" kept good, and when used by the defendant for other
" purposes it ceases to have that effect."

Bissell v. *Heyward*, 96 U. S., 580.

See also: *Gyles* v. *Hall*, 2 P. Wms., 378.
Aulger v. *Clay*, 109 Ill., 487.
Brooklyn Bank v. *DeGraaw*, 23 N. Y. 342.

In *Bissell* v. *Heyward*, *supra*, on a bill for the specific performance of a contract for the sale of land, Bissell, the purchaser, who was the defendant, relied on a tender of the balance of purchase money, which was refused, as stopping the payment of interest. But this court said:

" One of the statements of fact in the case sets forth
" that Mr. Bissell tendered the money; and fails to state
" that he deposited it, or in any manner set it apart or

" appropriated it for the purpose of tender. The other " states that he used the money he had thus provided. " The legal effect is the same. To have the effect of " stopping interest and costs a tender must be kept " good, and when used by the defendant for other pur- " poses it ceases to have that effect."

Roosevelt v. *Bank*, 45 Barb., 579.
Giles v. *Hart*, 3 Sal. R., 343.
Swetland v. *Squire*, 2 Salk., 623.

Aulger v. *Clay*, *supra*, was a bill for specific performance of contract. The opinion of the Supreme court of Illinois was delivered by Mr. Justice WALKER, who said:

" This case presents the single question whether there " was such a tender as stopped the interest on the note " given for a portion of the purchase money for the " land. * * *

" It is claimed that Clay made a tender when the note " matured, and was thereby released from paying any in- " terest on the balance of the purchase money after the " tender was made. We will not stop to discuss the " question whether there was a sufficient tender, as, if " there was, it was not kept good, so as to stop the ac- " cruing of interest. To have that effect the tender " must be kept in money, at all times ready to be paid, " and subject to the order of the creditor at any time " when he shall comply with his contract, so as to be " authorized to receive it. This is the general doctrine, " and is settled in this court. * * *

" Although the identical money tendered does not " vest in the creditor, it so far becomes his, if the tender " is kept good and is brought into court, that he cannot " recover any interest, costs or damages if the tender is " for the proper amount, and all the requirements of

" the law were observed in making it—hence the debtor " by using the money, virtually withdraws his tender " and makes it his own. It may be that the precise " pieces of money need not be kept separate, but the " amount must be kept at all times subject to be received " by the creditor when he calls for it. These rules were " not observed in this case, and the tender was not suffi- " cient to arrest the accruing of interest."

IV.

THE OMITTED TAX.

In accordance with the rule stated by this court in *Gage* v. *Pumpelly*, *supra*, the court should have decreed the repayment of the item of $373.21 for the taxes of 1882, paid by Ogden on September 29, 1883. The interest thereon to the date of the decree amounted at six per cent. to $148.39. The proof was clear that the money was paid. There was no testimony to the contrary.

V.

THE PRINCIPLE OF RE-IMBURSEMENT.

It is apparent from the proofs introduced on behalf of Ogden, that even if the court below had decreed the repayment to him of all sums paid out by him at tax sales and on account of taxes, in accordance with the rule stated in *Gage* v. *Pumpelly*, *supra*, he would not have been reimbursed or compensated for his outlays in this matter.

Russ certainly would not have done equity if he had

repaid these sums with six per cent. interest. For a period of over ten years, while money was scarce and capital worth at least eight per cent. (Rec., 59), Russ defaulted in the payment of his taxes, allowed his property to go to tax sale and compelled the tax purchaser to protect his purchase by paying the taxes which subsequently accrued. The payments proved to have been made by Ogden for expenses were all necessary in connection with these purchases and payments. Under the circumstances the offer of Ogden, made in his answer, to waive his claim of ownership to the premises, to surrender the certificate and reconvey said premises on payment of amounts paid by him on account of said premises, with the penalties, and ten per cent. interest, together with his outlays for expenses and charges in connection with such payments, etc., was entitled to due consideration. If these amounts had been decreed to Ogden, he would only have received such amounts as by the statutes of Illinois then in force he would have been entitled to receive on redemption. (R. S. Ill., Sec. 212, Ch. 120.)

Whatever may be the rule as to compensation on an ordinary bill to redeem from a tax sale, it is yet insisted that a more equitable rule, and one which will insure the owner of the tax title adequate compensation, should be applied where, as in the case at bar, he offers to relinquish his title on proper compensation being made him, and more especially where, as here, the taxes on account of which sales were made, were not only not shown to have been in any respect illegal, but the sales were due to the gross neglect of the owner to pay his taxes.

The rule as applied in *Gage* v. *Pumpelly*, *supra*, and the Illinois cases there referred to, grew out of the hostile attitude taken by purchasers at tax sales, that is, an attitude of defiance and a claim of ownership of the fee. In this case, although the fee was claimed, the offer was made to surrender on being reimbursed.

Respectfully submitted.

GEORGE W. SMITH,
Counsel for Appellants.

ADDENDA TO APPELLANT'S BRIEF.

Some six weeks prior to the tender, and on June 20, 1892, Carne & Drury, agents, rendered a statement to Russ, showing Ogden's claim, including a charge for a deed, to be $7,879.18. (Rec. 54, p. 89.)

Three days after the tender, and on August 10, but before service of summons upon the agents (Rec., p. 5), and three and one-half years before the voluntary appearance of Ogden (Rec., p. 11), he paid in addition $744.44, thereby increasing his claim to $8,623.62 as against the tender of $3,200, and the claim so stood, having been further increased by a payment of $373.21 on September 29, 1883, until the date of the master's report, on October 1, 1888, although in the meantime and on March 26, 1886, the answer of Ogden had been filed.

On October 1, 1888, the date of the master's report (Rec., pp. 20 to 24), a computation showed that the amounts so paid on August 10, 1882, and September 29, 1883, with penalties, interest, and legal expenses of $300, had nearly come up to the amount charged for a deed in the statement of June 20, 1882. (Rec., p. 90.) On May 21, 1890, with charges for a deed and legal expenses eliminated, the amount was $8,705.34.

The allowance of the item of August 10, 1882, was disputed by appellee until after the entry of the decree, and made the subject of an exception to the master's report. (Rec., p. 24; *supra*, p. 12.)

This sum of $8,705.34 (*supra*, p. 13) was $5,507.34 in excess of the tender of $3,200, which, until May 21, 1890, the day following the entry of the decree, was the only sum admitted by appellee to be payable.

Gage *vs.* Busse, 102 Ill., 592, cited in Gage *vs.* Pumpelly, *supra*, was a case where the premises had been sold for a tax, of which over one-fourth was unauthorized. The owner claimed the right to redeem by paying the lawful tax only, and interest. Costs were awarded against the holder of the tax title, as in this case one-half were (Rec., p. 30). The State court allowed *redemption* money, did not charge costs in favor of the owner of the fee, and said that to pay taxes that should have been paid, with 6 per cent. interest only, would be to invite persons to omit to pay their taxes and to speculate.

Office Supreme Court U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1893.

No. ~~209~~ 229

John Caare, Jr., Isaac C. Ogden, Hiram Coombs, Edwin Drury and Henry Wulff, County Clerk,
Appellants,

vs.

Augustus Russ,
Appellee.

Appeal from Circuit Court of the United States, for the Northern District of Illinois.

ARGUMENT FOR APPELLEE.

ALLAN C. STORY,
COUNSEL FOR APPELLEE.

BARNARD & GUNTHORP, PRINTERS, CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1893.

No. 299

John Caare, Jr., Isaac C. Ogden, Hiram Coombs, Edwin Drury and Henry Wulff, County Clerk,
Appellants,

vs.

Augustus Russ,
Appellee.

} Appeal from Circuit Court of the United States, for the Northern District of Illinois

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ADDITIONAL STATEMENT OF THE CASE.

THE LEGALITY OF THE TAX DEED.

The bill in this case shows additional to the portions quoted by counsel for appellants (Brief, p. 3, statement):

" That prior to the issuance of said tax deed, *the de-*
" *fendants did not serve any of the occupants of the said*
" *lots, or make any due publication, or give any reasonable*
" *notice to the owners or parties* interested, *nor by affida-*
" *vits of facts stated particularly, show that* they had so
" done, or that they had done those things which in case
" of said proceedings would entitle them to a deed. "
(Pr. Rec., 3.)

The answers are silent as to each of these averments, except the last clause of the answer of Carne, Drury & Coombs, which admits that they "are true, to the knowledge or belief of these defendants," (Pr. Rec., 7, 8), while the final clause of Ogden's answer "denies any "other matter or thing in the said bill," etc. (Pr. Rec., 17.)

The answer of Ogden also contains the following remarkable averments (Pr. Rec., 16):

"That said complainant has been represented in the "city of Chicago by one Emerson, and that since the "sale of September, 1877," (on which the tax deed to Ogden of March 16, 1880, is based) this defendant, through said Carne & Drury, or some one of the members of said firm, or said Coombs, has frequently applied to said Emerson to pay to this defendant *the amount required by law to redeem said premises, and has offered to allow the same to be redeemed upon such terms.*

"And this defendant now here, while insisting that the "sales hereinabove mentioned were in all respects regular and valid, and that said tax deed operated to convey said premises to this defendant, *offers to waive his "claim of ownership to said premises, and his claim under "the certificate aforesaid, and to surrender said certificate, "and to reconvey said premises to said complainant*, if said "complainant will pay to him the amounts which have "been paid by this defendant on account of said premises, "with the penalties which have accrued thereon, and ten "per cent. interest on the sums so paid from the date of "payment together with the outlays of this defendant for "expenses and charges in connection with said payment "and the procuring of said deed and advertising.

"And this defendant insists that by the law of Illinois,

"as it now is, *he is entitled*, even in case of an invalid sale, "to be reimbursed moneys so paid, with such penalties, "interest and expenses.

"This defendant further answering, says that he has "paid on account of taxes, assessments and costs levied "or charged against said premises on the dates mentioned, "the sums following." Here follow eight payments, the last being September 29, 1893—one year and fifty-two days after date of filing the Russ bill—aggregating "$3,887.32 exclusive of penalties, interest, advertising, "clerk's and recorder's fees, serving notices, charges of "counsel and agents." (Pr. Rec., 17.)

Thus, by his answer, Ogden, the principal defendant, in terms, voluntarily came into court and submitted to the Circuit court the question of *what sum of money was equitably due* from, and should be paid by Russ under the laws of Illinois, in order to cancel and remove the tax-deed, and certificate charged in the bill to be "clouds" upon his fee simple title.

There is no suggestion in the answer of the amount of the other items of Ogden's claim. The only sum named in the answer, being as we have seen $3,887.32. The amount allowed by the chancellor was $4,294.84. (Pr. Rec., 30.)

The record, therefore, at the threshold presents the question:

I.

HAS THIS COURT ANY JURISDICTION OF THIS APPEAL?

If we take the largest sum named in this brief of counsel, $8,705.34 (brief, 13) as the amount of appellant's claim, and deduct the amount allowed in the decree, and paid into court, the difference or actual amount in controversy is only $4,500.50, *four hundred and ninety-nine dollars and fifty cents less than the statutory limit* of the jurisdiction of this court.

It has been the doctrine of this court from its earliest adjudications: That, though a plaintiff may claim an amount sufficient to sustain the appellate jurisdiction of the Supreme court and recover a less sum than the jurisdictional amount, he may have his appeal, or writ of error, to review the decree or judgment in his favor.

But the defendant has no such right since the amount in controversy *as to him*, is the judgment of the court below. Ogden has no cross-bill or other pleading *in which he specifically claims* an amount as large as five thousand dollars.

It is true his answer claims $3,887.32 with certain indefinite accretions, consisting of illegal interest, etc., amount not named, while the decree after a full accounting awarded $4,291.84, which was paid into court.

As Russ, in his bill, offered to pay all such sums, as by law he should pay, and Ogden in his answer offered to reconvey the premises and assign his certificate upon being paid what he had paid for taxes with interest, etc., *as allowed by the laws of Illinois*, there was practically no question to be litigated, merely an accounting, before the

master and court to ascertain the actual amount to be paid by Russ.

In any view of the case, therefore, the amount in controversy is insufficient to give jurisdiction, and the appeal should be dismissed.

Gordon v. *Ogden*, 3 Peters, 33.
Smith v. *Honey*, *id.*, 469.
Clifton v. *Sheldon*, 23 How., 481.
Troy v. *Evans*, 7 Otto, 1.
Tintsman v. *National Bank*, 100 U. S., 6.
Bank of U. S. v. *Daniel*, 12 Peters, 32.

II.

THE TAX DEED.

The decree finds "all and singular the matters and "things in said bill of complaint contained to be true as "therein stated, and that complainant is entitled to the "relief sought." (Pr. Rec., 28.)

This is abundantly shown by the evidence.

Section 216, chapter 120, R. S. Ill., 1874, in force at date of sale and deed, provides *inter alia:*

"Hereafter no purchaser * * * at any sale of "lands or lots for taxes * * * shall be entitled to a "deed for the lands or lots so purchased, until the fol-"lowing conditions have been complied with, to wit: "such purchaser * * * shall serve or cause to be "served a * * * notice *on every person in actual "possession or occupancy of such land or lot, and also* the "person in whose name the same was taxed or specially "assessed, * * * at least three months before the

"expiration of the time of redemption from such sale," specifying also what the notice shall contain.

Hurd's Stat. Ill., 850.
2 Starr & Curtis, p. 2,098.

Section 217 provides, p. 2,100:

"Every such purchaser * * * by himself or "agent shall *before he shall be entitled to a deed, make an* "*affidavit* of his having complied with the conditions of "the foregoing section, *stating particularly the facts re-* "*lied* on as such compliance, which affidavit shall be de- "livered to the person authorized by law to execute such "tax deed * * * and which shall by him be filed "with the officer having custody of the record of the "lands * * * sold for taxes * * * to be by "such officer entered on the records of his office and "carefully preserved among the records of his office, and "which record or affidavit shall be *prima facie* evidence "that such notice has been given, any person swearing "falsely in such affidavit, shall be guilty of perjury," etc.

a. No notice was given to parties in possession. No affidavits thereof filed.

The only evidence in this record of notice to the parties in possession, W. H. Emerson, Sarah B. Emerson, William Brown and W. R. Wilson, is the purported affidavit of Adolph Kunz, that he served a notice upon W. H. Emerson, personally, on the 5th of May, 1879, and Thomas Cross, that he served a notice upon W. R. Wilson and Mrs. W. H. Emerson, personally, on the 27th of March, 1879, each of which affidavits is subscribed and sworn to before *Edwin Drury*, one of the partners in the firm of Carne & Drury, and an appellant herein, and personally interested in the subject-matter,

being one of the purchasers at the tax sale. (Pr. Rec., 78, 79.)

This is a fatal objection to each of these affidavits, for it is the obvious intent of the statute, that *oaths should be administered by competent disinterested persons*, and it has been held even that an affidavit sworn before an attorney, counsel or solicitor of the party is insufficient.

Taylor v. *Hatch*, 12 Johns., 340.
Willard v. *Judd*, 15 Johns., 531.
Wood v. *Harper*, 3 Beav., 290.
In re Hagan, 3 Atk., 813.
Hopkin v. *Hopkin*, 10 How., p. 2.
In re Gray, 13 Eng. Law & Eq., 96.
21 Law Jour., Sec. 380.
Smith v. *Woodraffe*, 6 Price, 230.
Cooper v. *Archer*, 12 Price, 1,491.
Ex parte Brockhurst, Rose's R., 145.
People v. *Spalding*, 2 Paige, 326.
Link v. *City of Litchfield*, 141 Ill., 470.

A fortiori where the notary is a person actually interested in the controversy.

Greenleaf (Vol. 3, Sec., 382), speaking of affidavits says: "An affidavit must be sworn before some person "authorized by law to administer such oaths; and gen- "erally speaking any person authorized to take deposi- "tions, or to examine witnesses in the cause, is qualified "to take affidavits."

As to depositions in this state: "any *competent and* "*disinterested person* may be appointed as commissioner, "etc."

1 Starr & Curtis, C. 51, Sec. 26.
Hurd's Stat., p. 479.

Again in Greenleaf on Ev., Vol. 1, Sec. 322, "any "competent officer," not being of counsel or *interested in the suit*, "may take affidavits."

Sec. 2, C. 101, Ills. R. S., 74 provides that "notaries "public shall have the power to administer oaths, and to "take affidavits and depositions." So that so far as the authority of a notary is concerned, affidavits and depositions stand on the same footing.

It appears by the evidence of John Carne (Pr. Rec., 50). "At this time (1874 to 1886) the firm was composed of John Carne, *Edwin Drury, Hiram Coombs and Horace G. Drury.*

Without relying wholly upon the invalidity of the affidavits we proved by the testimony of William H. Emerson, that he was never served with any such notice on the 5th of May, 1879, but that he was in possession, and lived on the premises with his family, and was at home during that time. (Pr. Rec., 46.)

Again, Mrs. Sarah B. Emerson swears positively that she lived on the premises at this time, that she was never served with any notice at all, and that W. R. Wilson and William Brown *also* occupied the premises. (Pr. Rec., 47.)

There is no proof or pretense, even in the void affidavits, that any notice was ever served or attempted to be served on William Brown, one of the occupants.

b. No notice to the assessee, J. K. Pollard.

Neither is it contended that any service was had upon J. K. Pollard, in whose name all these taxes were assessed. (See copies of tax record, Ex. C, D, E, F and G; Pr. Rec., 59–61–63, 65–69–74.) And the only evidence seeking to excuse this neglect is the affidavit of Edward W. Cross

that he made diligent search and inquiry and was unable to find him, or hear of his being in the county or a resident thereof, and that on the 27th of March, 1879, he could not be found. This affidavit is also subscribed and sworn to before *Edwin Drury* (P. R., 79), and the same objection applies as to the others. And the same objection is also urged as to the affidavit of Hiram Coombs (P. R., 77), which was subscribed and sworn before *Horace G. Drury*, another one of the firm of Carne & Drury, etc.

On the other hand, it is shown by the evidence—W. H. Emerson, (P. R., 46) that J. K. Pollard's name, office and residence, were to be found in the city directory for 1879, as follows: "John K. Pollard, Moore, Coventry & "Co., 23, 79 Dearborn street; house 326 Calumet ave- "nue."

Moreover, the evidence of Arthur D. Rich (P. R., 47, 48, p. 27), that J. K. Pollard lived in the county since 1866, and that he has frequently met him on the streets during that time, is corroborated by Daly S. Moore, of Moore, Coventry & Co. (P. R., 43, 44), who is a wholly disinterested party, that he has known J. K. Pollard since 1849; that in 1879 he was his partner in business at 79 Dearborn street; *that he did not leave the city during the year; that in the spring of that year he lived somewhere on Calumet avenue; that he met him every day, usually during business hours.* See, also, Pollard's affidavit (Pr. Rec., 9). No evidence was introduced by appellants on this subject.

We have seen, *supra*, that no notice was served upon *William Brown*, who also occupied the premises at the time in

question (Test. of Mrs. Emerson, Pr. Rec., 47), and therefore the tax deed of March 16th, 1880, was void.

The decree specially finds that there was no attempt to serve Pollard.

III.

AS TO THE CERTIFICATE OF SALE OF OCTOBER 11, 1880.

It is averred in the bill as to this certificate :

"That the taxes upon which the said tax certificate is "predicated, were both illegally levied and apportioned, "and that the same *were illegally returned as delinquent.* "*That no judgment for the same has ever been rendered,* "*that no legal precept has ever been issued,* and that no "legal sale has ever taken place." (Pr. Rec., 3.)

The taxes assessed upon this property for 1873, 1874 and 1875, amounting to about $700, ceased to be a lien in 1877, when the first sale to appellant was made, and thereafter formed no charge upon the land.

In *Low* v. *People*, 116 Ill., 244, judgment had been rendered in 1881 against certain lots for the general taxes for the year 1880, and the property was sold to one Gage, who paid the taxes for 1881 to 1883, inclusive, and the current taxes for 1884. At the July term, 1885, of the County court of Cook county, application was made for judgment, against the same property for "back "taxes," for the years 1873, 1874, 1876, 1877, and 1878, for which the property had been "forfeited to the state," under section 203 of the Revenue law. (Chap. 120 R. S. Ills.; 2 Starr & Curtis, p. 2,095.)

The owners resisted but the county court rendered

judgment for *all the forfeited taxes with interest and costs*, and the owners took the case to the Supreme court.

Chief Justice MULKEY, in the opinion of the court, reversing this judgment, says (p. 246): "Without dis-"cussing any of the other questions presented, we think "it clear that *when the state sells land in satisfaction of a* "*tax judgment, it can not turn around and defeat the* "*purchaser's title by a resale of the same land for taxes,* "*which were due and owing when the judgment was ren-*"*dered*, and might have been included in it. A sale "under such circumstances *must be regarded as an aban-*"*donment of all back taxes.*"

It is proved in the record (Pr. Rec., 59, 76) and admitted by counsel (brief, p. 4) that the judgment and precept under which the sale mentioned in the certificate of 1880 was made, contained *taxes for 1873, 1874 and 1875*, amounting to over $700, forfeited to the state prior to 1877—date of sale covered by the tax deed (Pr. Rec., 66, 67, 68)—in addition to the taxes of 1879. (See Pr. Rec., after p. 74.)

This brings this case squarely within the rule laid down in *Law* v. *The People*, *supra*.

In *Drake* v. *Ogden*, 128 Ill., 603, the Supreme court of Illinois said to this same appellant: "A portion of the "taxes levied were illegal, and the land was not liable for "the tax; the fact that a large portion of the tax was "legal, does not change the result. The illegal portion "of the tax rendered the judgment and sale void."

The same rule was recognized in this court in *Gage* v. *Pumpelly*, 115 U. S., 454, cited by appellants.

IV.

THE TENDER OF AUGUST 7, 1882.

a. As to keeping the tender good.

In foreclosure and other cases, notably for specific performance, where a debt is actually owing from the defendant to the plaintiff, and a tender has been made before suit, the defendant to stop interest must keep his tender good, either by bringing the money into court or showing a deposit in some proper place subject to plaintiff's order.

The cases cited by counsel (brief, 17, 18,) illustrate this rule.

In the case at bar, there were never any contractual relations between the parties; no debt was ever due or owing from Russ, the owner, to any or all of the defendants.

By filing this bill, and asking equity in the prayer for the removal of these two illegal tax sales, the cardinal principle of the court was invoked, requiring that complainant should first do equity. Compliance with this principle was attempted by a tender of $3,200 on the same day and just before the bill was filed, and by the usual offer therein to do equity.

If the money had been accepted, the bill would never have been filed. If defendants, at any time during this eleven years' litigation, had offered to accept it, or asked that the money be brought into court, and complainant had refused, or neglected to "keep his tender good," that would have ended the case. It would satisfy no principle of equity, or morality, to compel a complainant to pay one

per cent. to the clerk and bring the money into court, and lose the interest for eleven years when even then the adverse party refuses to receive it.

No such case is cited; none can be found.

Besides, the record shows that Russ's agent sent the money to him after defendants refused the tender. He is shown to own this valuable property, and at least $3,200 in cash besides, and there *is no evidence that he has ever used the money for any other purpose.*

He is, therefore, clearly within the principle that a condition of things once shown to exist is presumed to continue, and his tender is "kept good," within the rule contended for by counsel.

Greenleaf on Ev., § 41.
Matthews on Presump. Ev.

b. The amount tendered was greater by $1,600 than defendants were entitled to.

It is shown *supra*, p. , that the "forfeited taxes" for the years 1873, 1874 and 1875, were, by the judgment and sale of 1877,—which culminated in the tax deed of 1880,—after that sale, no longer a lien upon the land, but such sale operated as an abandonment of said taxes.

Law v. *People*, *supra*.

In spite of this fact, these defendants, voluntarily, in September, 1879, paid these taxes with ten per cent. interest and costs and penalties added, amounting, in July, 1877, to $799.98. (Exhibit E, Pr. Rec., 62–3.)

John Carne, Jr., testified: "On September 27, 1879, "we paid the general taxes and back forfeitures, "amounting to $1,226.24." (Pr. Rec., 53.)

This also substantially appears from two receipts, one

for lot 13, amounting to $618.90 (Pr. Rec., 80), and one for lot 14, amounting to $607.28 (Pr. Rec., 85), or a total of.....$1,226.18.

The "forfeitures" against lot 13, are here shown to be $485.28, and against lot 14, $455.65. Of the $1,226.18 charged against Russ as taxes paid September 27, 1879, $940.93 is thus shown to have had no existence, not being a lien on the premises.

Again, in 1880, Exhibit H, (Pr. Rec., 74–5), our Cook county tax masters obtained judgment as follows: "Taxes and interest, 1879, $262.58, back taxes and forfeitures to state for 1878, *and prior years*, this same old tax, amounting to $723.95, and defendants *who paid them without authority the year before*, buy in the property at the sale.

This is the 1880 certificate.

We have seen *supra*, that this judgment and sale was void under *Law* v. *People*, because of the sale in 1877.

The proofs show that it was also void because the taxes had been fully paid.

The following statement shows that, independent of any question of tender, the amount allowed in the decree was very much more than defendants are shown by the evidence in this record to be entitled to receive.

Amt. of sale of Sept., '77, Lot 14.....$	142 80
Int. to date of decree, May 20, 1892, 14 years, 8 months, 8 days, 6 per cent.....	125 85
Amt. of sale, lot 13, same date.....	140 38
Interest, same period.....	123 72
Sixth installment So. Park taxes, paid Aug. 27, '78.....	6 98
Int., 13 years, 8 mos., 23 days.....	5 75
Seventh installment same, paid Aug. 5, '79..	7 28

Int. 12 years, 9 months, 15 days.....	5 59
Sept. 27, '79, paid $1,226.18, less illegal taxes forfeited prior years $940.93, gives actual taxes.....	285 25
Int. on same to date of decree (12 years, 7 months, 23 days).....	216 51
Sale Oct. 11, 1880, deducting illegal amounts, leaves taxes 1879 paid "Exhibit H".....	262 58
Int. to date of decree (11 yrs., 7 mo., 9 das.)	186 43
Special assessment sworn to by Carne, no receipt shown nor date except "1882." (Pr. Rec., 53.).....	484 31
Int. on same from Dec. 31 to date of decree (9 yrs., 4 mos. and 20 days).....	272 83
Genl. taxes 1882, pd. Aug. 10.....	260 13
Int. to May 20, '92, (9 yrs., 9 mos., 10 das.)	152 70
Paid Sept. 29, 1883, taxes 1882.....	373 21
Int. to May 20, '92.....	193 46
Total taxes paid and interest.....	$3,673 66

While the amount of the decree was $4,291.84, an excess of $628.18 over all lawful claims and payments proved.

The question of tender thus becomes immaterial.

LASTLY.

V.

THE PRINCIPLE OF REIMBURSEMENT.

A long, unbroken line of decisions by the Supreme court of Illinois has settled the rule as to the conditions upon which equity will relieve from illegal sales for taxes in suits by the real owner of the property.

These are, repayment of the amount of taxes lawfully and actually paid, with legal interest.

Barnard v. *Kline*, 66 Ill., 206.
Reed v. *Taylor*, 56 Ill., 288.
Phelps v. *Hord*, 87 Ill., 442.
Farwell v. *Harding*, 96 Ill., 32.
Moore v. *Wayman*, 107 Ill., 192.
Smith v. *Hutchinson*, 108 Ill., 662.
Gage v. *Hervey*, 111 Ill., 305.
Gage v. *Nichols*, 112 Ill., 269.
Alexander v. *Merrick*, 121 Ill., 606.
Gage v. *Pirtle*, 124 Ill., 502.

In the last case the learned counsel for appellant represented the owners, and the tax-buyer sought to enlarge the rule as stated above under an act of the legislature passed in 1885, allowing "penalties." *Gage* v. *Busse*, cited by appellant was relied upon as authority.

The Supreme court of Illinois, SHELDON, J., in the opinion, say * * * (page 504, foot):

"*Gage* v. *Busse*, *we do not regard as an authority sus-*
"*taining appellant's claim*, that an amount equal to re-
"demption money should, in this case, be required to be
"paid * * * (page 505). The penalties to be paid
"by this proviso (Laws 1885, page 235) are penalties
"which the holder of the tax deed, or his assignors, shall
"have paid or be entitled to in procuring the tax deed.
"Money paid on redemption is not money paid by the tax
"sale purchaser, or which he is entitled to in procuring
"his tax deed. *It is money paid by the land owner*, and
"paid not to procure, but *to prevent a tax deed. It is not*
"*money the tax sale purchaser was ever entitled to have.*"
* * * (Page 506.) It would not seem reasonable to

require the land owner to pay such amounts (the statutory penalties) to set aside a tax deed upon his land, wrongfully obtained. It would be equitable that he should refund to the tax sale purchaser the amount paid upon the purchase and all taxes *charged upon the land* paid by the latter, with interest."

This court has fully recognized the justice of this rule in several cases, notably in *Gage* v. *Pumpelly*, 115 U. S. Rep., 463.

It would doubtless be an advantage to tax buyers if our courts of equity would so modify their principles that buying tax titles would *always* prove profitable to the buyer, even where payments are made, as here, when there is no *lien* or taxes due on the land, or the land is bought by the tax-buyer for taxes he knows have already been paid by himself.

But the scandalously loose and oppressive methods of extending taxes, prevailing in Cook county, as shown in this record, must, to some extent at least, be attributed to the existence of persons willing to buy the property of citizens at tax sales, without any regard to the fact whether anything is due thereon or not.

The offer of appellant Ogden, four years after suit brought, to accept the inevitable and take his lawful dues, can hardly be considered so meritorious as to induce this court to take the lead in breaking down existing barriers which the wisdom of ages has provided for the due administration of justice.

There is no equity in the appeal, and it should either be dismissed, or the decree affirmed.

Respectfully submitted.

ALLAN C. STORY,
Of Counsel for Appellee.